TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 304.

GUETH, COLVIN & BOLLBROOK COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED APRIL 21, 1923.

(28,878)

(28,876)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 364.

CURTIS, COLLINS & HOLBROOK COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

IN EQUITY.

(Bill of Complaint.)

To the Judges of the Circuit Court of the United States, for the Ninth Circuit, Northern District of California:

GEORGE W. WICKERSHAM, Attorney General of the United States, and Robt. T. Devlin, United States Attorney for the Northern District of California, for and on behalf of the United States of America, complainant, bring this Bill against William J. Gardenhire, Charles E. Gregory, Curtis, Collins & Holbrook Company (a Corporation), Pennsylvania Lumber Company (a Corporation), John Doe, Richard Doe, Albert Doe, Henry Doe, George Doe and Frederick Doe, all citizens and all residents of the State and Northern District of California, and hereby made defendants in this Bill of Complaint; and thereupon your orator complains and says:

I.

That heretofore, to wit, on the 12th day of July, 1902, the said William J. Gardenhire, under the provisions of the Act of Congress of June 3d, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by act of August 4, 1892, and of the regulations of the Department of the Interior of the United States and of the laws of the United States, filed in the Land Office of the United States

at Susanville in the State of California, his certain sworn statement and application for the purchase of a certain portion of the public lands of the United States described as follows: SE. ¼ of NE. ¼, NE. ¼ of SE. ¼, S. ½ of SE. ¼, of Sec. 9. Twp. 26 N., R. 6 E., M. D. M., in the district of lands subject to sale at Susanville, California:

Said sworn statement and application was in the manner and form prescribed by the Department of the Interior of the United States and was in due form and the same was duly and regularly accepted by the Register and Receiver of the said Land Office at Susanville, California, and among other matters contained the statement that the said applicant and affiant did not apply to purchase the land above described and in said statement and application described, on speculation, but in good faith to appropriate it to his own exclusive use and benefit and that he had not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever by which the title he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself.

II.

That said application and sworn statement was duly and regularly subscribed and sworn to by said applicant and affiant before Alfred H. Taylor, Receiver, of the said Susanville Land Office; that the said application to purchase and sworn statement was in the form required by the laws of the United States and was then and there made out upon what

was then and there known in the said Department of the Interior as blank form 4–537; that said application and sworn statement was duly and regularly filed with the said Register and Receiver of the said Susanville Land Office on the day last aforesaid.

III.

That for the purpose of perfecting said application the said applicant and affiant did thereafter and in due and proper time present to said Register and Receiver, what is known as the non-mineral affidavit required by the laws of the United States and the rules and regulations of the said Department of the Interior; that the same was duly and regularly made out on what is known in the said Department of the Interior of the United States as form 4–062.

IV.

That said applicant and affiant supplied the testimony required by the laws of the United States and the rules and regulations of the Department of the Interior and paid the fees, required by law and also the moneys required by law for the purchase of said land, and thereupon the Receiver then in office did duly and regularly execute unto the said affiant and applicant what is known as a Receiver's Receipt; that said receipt was dated the 20th of September, 1902, and did acknowledge the receipt of said moneys as being in full for the land above described; that said receipt was duly and regularly signed by the proper officer who was then and there the Receiver of the United States at the Susanville Land Office; a duplicate thereof at the time and

place of making the same as aforesaid was delivered by the said Receiver to the said applicant and affiant. [1*]

V.

That in compliance with law the said Register of the said Land Office did give notice that the said applicant and affiant had filed in his office his said sworn statement for the purchase of the land as hereinabove described, and would at a time and place fixed in said notice offer proof to show that the land sought was more valuable for its timber and stone than for agricultural purposes, and would establish his claim to said land before the Register and Receiver of said office at Susanville, State of California, at said time and place and said notice was in compliance with law duly published in a newspaper in accordance with law for the time required by law.

That at the time named in said notice said applicant and affiant did appear with his witnesses and did testify in said proceeding.

That thereat said applicant and affiant did testify under oath regularly administered to him by an officer of the Government of the United States duly qualified to administer oaths that he the said applicant and affiant did not apply for said land for the purpose of obtaining title to the mineral land but with the object of securing said land for timber purposes and did desire to secure the same for his own exclusive use and benefit; that said testi-

*Page-number appearing at foot of page of original certified Transcript of Record.

mony was false and untrue in that said applicant did not intend to secure his said land for his own use and benefit but for the use and benefit of others, to wit: Curtis, Collins & Holbrook Company, Pennsylvania Lumber Company and Charles E. Gregory.

That said applicant and affiant complied with all the forms of law required to obtain a patent to the lands hereinbefore described and that the said proofs offered by him were accepted by the said officials of the United States Land Office at Susanville, California, and by officials of the Department of the Interior of the United States as being in all respects regular and sufficient and as establishing the right of the said applicant and affiant to have issued to him a patent to the said lands hereinabove described; and in accordance with the rules and regulations of the Department of the Interior of the United States, the complainant herein by and through its proper officials duly and regulary executed and issued upon the 28th of October, 1902, its patent to the said tract of land hereinbefore described to the said applicant and affiant under the Acts of Congress hereinbefore described, which said patent purported to convey to the said applicant and affiant the title to the said lands; that the complainant and all and each of its officers accepted said proofs without any knowledge or notice of their falsity or of the fraud herein set out and prior to the issuance of said patent had no notice or knowledge of said fraud, but, on the contrary, believed the said statements of said applicant to be

true and believe that his application was made in good faith.

VI.

That the said entry hereinbefore described was not made in good faith under the laws of the United States nor was said patent secured for the exclusive use and benefit of the said applicant and affiant but at the instance and in the interest of other parties; that said statement that the said applicant applied to purchase said land for his own exclusive use and benefit was false and untrue in that said applicant before the filing aforesaid had agreed to convey the same to Curtis, Collins & Holbrook Company, Pennsylvania Lumber Company and Charles E. Gregory. That the other defendants hereinbefore the acquisition of title by them or either of them had full notice and knowledge of said fraud.

That on, to wit, the 26th day of September, 1902, said applicant and affiant did convey the land hereinbefore described to Charles E. Gregory, defendant aforesaid; that said defendant Charles E. Gregory, did thereafter convey the said land to other of the defendants unknown.

That the said defendant companies are corporations organized, existing and doing business under and by virtue of the laws of the State of California.

That the said defendants to whom conveyances have been made knew of the fraud hereinbefore described, and did request and procure the said William J. Gardenhire to make the entry aforesaid and

obtain the patent as aforesaid for their use and benefit; that they did know that said William J. Gardenhire was not making the said entry for his own exclusive use and benefit, but for their use and benefit, and the said defendants knew that the said patent had been obtained by the false statements of the said William J. Gardenhire, as hereinbefore described; when they received said conveyances. That the officers issuing said patent relied on said false statements; that otherwise said patent would not have issued; said statements, as all defendants at all times well knew, [2] were made with intent to defraud the complainant out of said lands.

VII.

That the complainant does not know the true names of the defendants John Doe, Richard Doe, Albert Doe, Henry Doe, George Doe and Frederick Doe, and therefore it sues them by the fictitious names aforesaid and prays that when their true names are discovered they may be inserted herein and this Bill may be amended accordingly.

VIII.

That all the defendants claim an interest in said land adverse to complainant, but said claim is wholly without right.

IX.

That said patent so executed and issued and the said deeds of conveyance were and are a cloud upon complainant's title.

X.

And lastly in support of the averments of this bill,

your orator begs leave to refer to the aforesaid application of the said applicant and affiant and to all of the affidavits, papers, documents, depositions, receipts, certificates, and proceedings had in the matter of the making of said entry and application to purchase, in so far as the same may relate to the issuance of the said patent, and to the records of the General Land Office of the United States and of the Department of the Interior of the United States, or to certified copies thereof.

Forasmuch as your orator can have no adequate relief, except in this court, and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief prayed, and may make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged; but not under oath, an answer under oath being hereby expressly waived.

WHEREFORE, your orator prays relief and decree of this Honorable Court that the patent to the land in this bill of complaint described, as issued by complainant to defendant William J. Gardenhire, be recalled and cancelled; that the money paid to the United States by said defendant William J. Gardenhire as the purchase price of said land be forfeited to the United States, and that the defendants and all other persons claiming under them be forever estopped from asserting any right, title or interest to said land, and that the land described in

said patent and this bill of complaint be declared public land of the United States, and that said patent and said deeds be declared null and void; and that this complainant may have such other and further relief as may seem to accord with the principles of equity.

May it please the Court to grant to the United States the writ of subpoena issuing out and under the seal of this Honorable Court, directed to the defendants, William J. Gardenhire, Curtis, Collins & Holbrook Company, Pennsylvania Lumber Company, and John Doe, Richard Doe, Albert Doe, Henry Doe and Frederick Doe, on a day certain, to be named therein, to be and appear before this Honorable Court to answer all and singular the premises, and to stand and abide by such other orders, directions and decrees as may be made therein.

GEO. W. WICKERSHAM,
Attorney General of the United States.
ROBT. T. DEVLIN,
United States Attorney for the Northern District of California, and Solicitor for Complainant.

[Endorsed]: Filed Jul. 25, 1910. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

IN EQUITY—No. 15,189.

UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS and HOLBROOK COMPANY (a Corporation), PENNSYLVANIA LUMBER COMPANY (a Corporation), JOHN DOE, RICHARD DOE, ALBERT DOE, HENRY DOE, GEORGE DOE and FREDERICK DOE,
Defendants.

Answer of Curtis, Collins and Holbrook Company.

Now comes the above-named defendant, Curtis, Collins and Holbrook Company and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exceptions or otherwise, which can or may be had or taken to the many errors, uncertainties and imperfections in said bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer thereto, answering, respectfully shows to the Court and says:

Admits that the said defendant, Curtis, Collins and Holbrook Company is a corporation organized,

existing and doing business under and by virtue of the laws of the State of California, and admits that the said defendants are and each of them is a citizen and resident of the State and Northern District of California.

Admits that heretofore, to wit, on the 12th day of July, 1902, the said defendant, William J. Gardenhire, under the provisions of the Act of Congress of June 3, 1878, entitled: "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Lands States by Act of August 4, 1892, and of the regulations of the Department of the Interior of the United States, and of the laws of the United States, filed in the Land Office of the United States at Susanville, in the State of California, his certain sworn statement and application for the purchase of a certain portion of the public lands of the United States, described as follows: SE. ¼ of NE. ¼, NE. ¼ of SE. ¼, S. ½ of SE. ¼ of Sec. 9, Twp. 26 N., R. 6 E., M. D. M. [4] in the district of lands subject to sale at Susanville, California.

Admits that said sworn statement and application was in the manner and form prescribed by the Department of the Interior of the United States and was in due form, and the same was duly and regularly accepted by the Register and Receiver of the said Land Office at Susanville, California, and among other matters, contained the statement that the said applicant and affiant did not apply to purchase the said land in said bill of complaint and

in said statement and application described, on speculation, but in good faith, to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever, by which the title he might acquire from the Government of the United States, might inure in whole or in part to the benefit of any person except himself.

Admits that said application and sworn statement was duly and regularly subscribed and sworn to by said applicant and affiant before Alfred H. Taylor, Receiver of the said Susanville Land Office; that the said application to purchase and sworn statement was in the form required by the laws of the United States, and was then and there made out upon what was then and there known in the said Department of the Interior as blank form 4–537; that said application and sworn statement was duly and regularly filed with the said Register and Receiver of the said Susanville Land Office on the said 12th day of July, 1902.

Admits that for the purpose of perfecting said application, the said applicant and affiant did thereafter and in due and proper time, present to said Register and Receiver what is known as the non-mineral affidavit required by the laws of the United States, and the rules and regulations of the said Department of the Interior; that the said affidavit was duly and regularly made out on what is known in the said Department of the Interior of the United States as form 4–062.

Further answering said bill of complaint and particularly the allegations contained in paragraph IV thereof, this defendant alleges that it has no knowledge or remembrance of the matters therein alleged, but to the best and utmost of its information it believes that said applicant and affiant supplied the testimony required by the laws of the United States and the rules and regulations of the Department of the Interior, and paid the fees required by law, and also the moneys required by law for the purchase of said land, and thereupon the Receiver then in office did duly and regularly execute unto the said affiant and applicant what is known as a Receiver's receipt; that said receipt was dated the 22d day of September, 1902, and did acknowledge the receipt of said moneys as being in full for the land above and in said bill of complaint described; that said receipt was duly and regularly signed by the proper officer who was then and there the Receiver of the United States at the Susanville Land Office; a duplicate thereof at the time and place of making the same as aforesaid, was delivered by the said Receiver to the said applicant and affiant.

Further answering said bill of complaint and particularly the allegations contained in paragraph V thereof, this defendant alleges that it has no knowledge or remembrance of the matters therein alleged, except as to those allegations hereinafter specially denied or admitted, [5] but to the best and utmost of its information, it believes that in compliance with law, the said Register of the said

Land Office did give notice that the said applicant and affiant had filed in his office his said sworn statement for the purchase of the land hereinbefore and in said bill of complaint described, and would at a time and place fixed in said notice, offer proof to show that the land sought was more valuable for its timber and stone than for agricultural purposes, and would establish his claim to said land before the Register and Receiver of said Land Office at Susanville, State of California, at said time and place, and said notice was in compliance with law, duly published in a newspaper in accordance with law, for the time required by law; that at the time named in said notice, said applicant and affiant did appear with his witnesses and did testify in said proceeding; that thereat, said applicant and affiant did testify under oath regularly administered to him by an officer of the Government of the United States, duly qualified to administer oaths, that he, the said applicant and affiant, did not apply for said land for the purpose of obtaining title to the mineral land but with the object of securing said land for timber purposes and did desire to secure the same for his own exclusive use and benefit; that said applicant and affiant complied with all the forms of law required to obtain a patent to the lands hereinbefore and in said bill of complaint described, and that the said proofs offered by him were accepted by said officials of the United States Land Office at Susanville, California, and by the officials of the Department of the Interior of the United States as being in all respects regular and

sufficient, and as establishing the right of said applicant and affiant to have issued to him a patent to the said land hereinbefore and in said bill of complaint described.

And further answering the allegations contained in paragraph V of said bill of complaint, and particularly the following portion thereof:

> "That said testimony was false and untrue in that said applicant did not intend to secure his said land for his own use and benefit, but for the use and benefit of others, to wit: Curtis, Collins & Holbrook Company, Pennsylvania Lumber Company and Charles E. Gregory,"

this defendant alleges that it has no knowledge or remembrance touching the matters contained in said last mentioned allegation, but so far as the same relate to the said William J. Gardenhire this defendant is informed and believes that said testimony was not false and untrue, or false or untrue, in the particulars set forth in said allegation or in any particulars or otherwise, or at all, but on the contrary, this defendant alleges on its information and belief that the said applicant did intend to and did secure his said land for his own use and benefit and that he did not intend to secure and that he did not secure his said lands for the use and benefit or for the use or benefit of others, to wit, Curtis, Collins and Holbrook Company, Pennsylvania Lumber Company and Charles E. Gregory, or any other person or persons, copartnership or copartnerships, corporation or corporations. That this defendant denies, upon its information and belief, that said

applicant intended to secure said land for the use and benefit or the use or benefit of this defendant, the Curtis, Collins and Holbrook Company, and alleges: That if the said applicant did intend to secure said land for the use and benefit or the use or benefit of this defendant, or of said other defendant corporation, or said defendant, Charles E. Gregory, or any other person or persons, copartnerships or corporations, that this defendant had no knowledge and it denies having any knowledge of such intent, therefore this defendant leaves complainant to make such proof as it shall be advised, to sustain the said allegation in said paragraph V in said bill of complaint contained. [6]

And this defendant further answering said bill of complaint and particularly the allegations contained in paragraph V thereof, admits that said applicant and affiant complied with all the forms of law required to obtain a patent to the lands in said bill of complaint described, and that said proofs offered by him were accepted by the said officials of the United States Land Office at Susanville, California, and by the officials of the Department of the Interior of the United States as being in all respects regular and sufficient and as establishing the right of said applicant and affiant to have issued to him a patent to the said lands hereinbefore and in said bill of complaint described, and in this connection, this affiant alleges, upon its information and belief that said proofs offered by said applicant and affiant were in all respects regular and sufficient and established his right to have issued to him a patent

to the said lands described in said bill of complaint.

And further answering said bill of complaint and particularly the allegations contained in paragraph V thereof, this defendant admits that in accordance with the rules and regulations of the Department of the Interior of the United States, said complainant by and through its proper officials duly and regularly executed and issued upon the 28th day of October, 1904, its, said complainant's, patent to the said tract of land hereinbefore and in said bill of complaint described, to the said applicant and affiant, under the Acts of Congress mentioned in said bill of complaint, which said patent purported to convey and this defendant alleges that it, said patent did convey to the said applicant and affiant, to wit, the said William J. Gardenhire, the title to the said lands.

And further answering said bill of complaint and particularly the allegations contained in paragraph V thereof, this defendant alleges that it has no knowledge, information, remembrance or belief as to whether or not the said complainant and all and each or all or each or any of its officers accepted said proofs or any proofs, without any knowledge, or knowledge or notice, of their alleged falsity or of the alleged fraud set forth in said bill of complaint, and that prior or that prior to the issuance of said patent, complainant and all and each or any of its officers had no notice or knowledge of said alleged fraud, therefore this defendant leaves complainant to make such proof as it shall be advised, to sustain said last-mentioned allegation in

said paragraph V of said bill of complaint contained.

And further answering said bill of complaint and particularly the allegations contained in paragraph VI thereof, this defendant alleges that, except as to those matters hereinafter particularly denied or admitted, it has no knowledge or remembrance concerning the matters in said paragraph VI alleged, but this defendant upon its information and belief denies that the said entry mentioned and described in said bill of complaint was not made in good faith under the laws of the United States or otherwise, and that said patent, or that said patent, was not secured for the exclusive use and benefit or the exclusive use or benefit, or for the use or benefit of the said applicant and affiant or applicant or affiant, but at the instance and in the interest or at the instance or in the interest of any other party or parties whomsoever. This defendant denies that the said statement that the said applicant applied to purchase said land for his own exclusive use and benefit was false and untrue or false or untrue in that said applicant, before the filing aforesaid, had agreed to convey the said lands mentioned in said bill of complaint to the said Curtis, Collins & Holbrook Company.

That this defendant has no knowledge or information as to whether the said allegation contained in said paragraph VI of said bill of complaint that the said applicant applied to purchase said lands for his own exclusive use and benefit, was false and untrue or false or untrue in that said applicant

before the filing aforesaid had agreed to convey the lands mentioned [7] in said bill of complaint to Pennsylvania Lumber Company and Charles E. Gregory, but to the best and utmost of its information this defendant believes that the said applicant, before the filing aforesaid or prior to the filing of said application, had not agreed to convey the said lands mentioned in the said bill of complaint to said last-named defendants or either of them or to any other person or persons, corporations or copartnerships. That this defendant denies that before the acquisition of title by it, or at any other time, it had full or any notice and knowledge or full or any notice or knowledge of the alleged fraud set forth in complainant's said bill of complaint or of any other fraud. That this defendant has no knowledge or remembrance as to whether the said defendant Charles E. Gregory or Pennsylvania Lumber Company had full notice and knowledge or had any notice or knowledge of the fraud alleged in said paragraph VI of said bill of complaint or of any fraud, but to the best and utmost of its information this defendant believes that the said Charles E. Gregory or Pennsylvania Lumber Company did not have full or any notice or knowledge of said alleged or any fraud, therefore, this defendant leaves complainant to make such proof as it shall be advised to sustain the said allegations contained in said paragraph VI of said bill of complaint.

And further answering the allegations contained in paragraph VI of said bill of complaint, this de-

fendant admits that on the 26th day of September, 1902, said applicant and affiant did convey the land described in said bill of complaint, to said Charles E. Gregory, and that on the 10th day of November, 1902, the said Charles E. Gregory did convey said land to this defendant, the Curtis, Collins and Holbrook Company, and admits that this defendant, the Curtis, Collins and Holbrook Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

And further answering said bill of complaint and particularly the allegations contained in paragraph VI thereof, this defendant denies that it knew of the said alleged fraud set forth in said bill of complaint or of any fraud or that it did request and procure or request or procure the said William J. Gardenhire or any other person or persons to make the entry alleged in said bill of complaint or any other entry, and obtain or obtain the patent mentioned therein, or any patent, for its use and benefit or for its use or benefit or otherwise, or to make the entry described in said bill of complaint or any entry, or to obtain the patent mentioned in said bill of complaint or any patent for its use and benefit, or for its use or benefit, or for the use or benefit of any other person or persons whomsoever, and this defendant denies that it knew that said William J. Gardenhire was not making said or any alleged entry as alleged in said bill of complaint for his own exclusive use and benefit or for his own exclusive use or benefit, or for his use or benefit, but for the use and benefit or for the use or benefit

of the said defendants Charles E. Gregory and the said defendant corporations, or either of them, or for any other person, copartnership or corporation, and this defendant denies that it knew or ever knew or that it now knows that the said patent mentioned in said bill of complaint, or any patent, had been obtained, or was obtained by the alleged false statements of the said William J. Gardenhire, set forth in said bill of complaint or by any false statements of the said William J. Gardenhire, or of any other person or persons whomsoever, or by any false statements whatsoever. That this defendant is informed and believes that the said Charles E. Gregory did not [8] know before the acquisition by him of the title to the lands described in said bill of complaint or at any other time, of the alleged fraud set forth in said bill of complaint or of any other fraud in connection with the acquisition of said land by said applicant, and that he the said Charles E. Gregory, nor the said defendant Pennsylvania Lumber Company, did not request and procure or request or procure the said applicant or any other person or persons to make the entry mentioned in said bill of complaint or to make any other entry and obtain or obtain the patent mentioned in said bill of complaint, or any other patent, for his, said Charles E. Gregory, or the said Pennsylvania Lumber Company's use and benefit or use or benefit, or for the use or benefit of any person or persons, copartnerships or corporations whatsoever, other than said applicant.

And this defendant believes that if the said ap-

plicant, as alleged in said bill of complaint or otherwise, was not making said entry for his own exclusive use and benefit or for his own exclusive use or benefit or for his own use or benfit that the said Charles E. Gregory and the said Pennsylvania Lumber Company did not know nor did either of them know of the same, and if the said applicant made said entry or was making said entry for the use and benefit or the use or benefit of the said Charles E. Gregory or the said Pennsylvania Lumber Company or of this defendant, that they the said Charles E. Gregory and the Pennsylvania Lumber Company did not know of the same.

And this defendant further alleges that if the said patent mentioned and described in complainant's bill of complaint was or had been obtained by the said applicant by the alleged false statements of him, the said applicant, set forth in said bill of complaint or by any other false statement or statements that this defendant believes that neither the said Charles E. Gregory or the said Pennsylvania Lumber Company knew of the same.

This defendant alleges if that the said entry mentioned in said bill of complaint was made by the said applicant mentioned therein, at the request, procurement or instance or in the interest of and for the use or benefit of, any person or persons other than said applicant, or if the said patent mentioned in said bill of complaint was obtained by the said applicant for the use and benefit of any person or persons other than said applicant, that the same was not known to this defendant, nor to

the best and utmost of its information and belief, to the said defendants Charles E. Gregory and Pennsylvania Lumber Company or either of them, before or when this defendant and the said Charles E. Gregory respectively acquired the title to said property as alleged in said bill of complaint. Except this defendant admits that when said patent was issued it inured to the benefit of the title to said land which this defendant had theretofore acquired from said applicant as hereinbefore alleged, and in that sense and in that sense only, said patent was obtained for the use and benefit of this defendant.

That this defendant is informed and believes that neither the said Charles E. Gregory nor the said Pennsylvania Lumber Company knew of the alleged fraud set forth and described in said bill of complaint, or of any other fraud, and that he the said Charles E. Gregory, nor the Pennsylvania Lumber Company, did not request and procure or request or procure the said applicant or any other person or persons to make the entry mentioned in said bill of complaint and obtain or obtain the patent mentioned in said bill of complaint, or any patent, for their or either of their use or benefit, or for the use and benefit of or the use or benefit of any other person or persons, copartnerships or corporations. [9]

That this defendant believes that neither the said Charles E. Gregory nor the said Pennsylvania Lumber Company knew that the said applicant, as alleged in said bill of complaint, or otherwise, was not

making said entry for his own exclusive use and benefit, or for his own exclusive use or benefit, or for his own use or benefit, or that he was making said entry for the use and benefit or for the use or benefit of them, the said Charles E. Gregory and the Pennsylvania Lumber Company, or either of them, or of this defendant, and that the said Charles E. Gregory did not know, nor did the said Pennsylvania Lumber Company know, that the said or any patent had been obtained by the alleged false statements of the said applicant set forth in the bill of complaint on file herein or by any other false statement or statements whatsoever.

And further answering the allegations contained in paragraph VI of said bill of complaint, and particularly the following portion thereof:

> "That the officers issuing said patent relied on said false statements; that otherwise said patent would not have issued; said statements, as all defendants at all times well knew, were made with intent to defraud the complainant out of said lands,"

this defendant alleges, that it has no knowledge or remembrance, except as hereinafter specifically denied, touching the matters contained in said last-mentioned allegation, but according to its best information, it believes that no false statements were made to, or relied on, by the officers issuing said patent.

This defendant denies that at all times or at any time, it well knew, or ever knew that the statements mentioned in said bill of complaint were false or

that they, or any of them were made with intent to defraud the said complainant out of said lands or to otherwise defraud said complainant.

This defendant admits that it claims an interest in said lands described in said bill of complaint, adverse to the complainant, but denies that it claims wholly or at all without right.

And further answering said bill of complaint and particularly the allegations contained in paragraph VIII thereof, this defendant admits that it claims an interest in said land described in said bill of complaint, adverse to complainant, but denies that it claims wholly or at all without right.

And further answering said bill of complaint, and particularly the allegations contained in paragraph IX thereof, this defendant denies that said patent mentioned in said bill of complaint, or any patent, so executed and issued, or so executed or issued, and that said deeds of conveyance were or that said deeds of conveyance were, or any of them were or are a cloud upon complainant's alleged title, and in this connection this defendant alleges that the said complainant has no right, title or interest in the land described in said bill of complaint or any part or portion thereof. [10]

SEPARATE DEFENSE.

And further answering said bill of complaint and as a separate defense thereto, this defendant respectfully alleges:

I.

That it is and ever since the 15th day of August, 1902, has been a corporation duly organized and

existing under and by virtue of the laws of the State of California and a resident and citizen of the State and Northern District of California; that it became a corporation under the laws of the said State of California, on the said 15th day of August, 1902.

II.

That on the 12th day of July, 1902, all that certain lot, piece or parcel of land situate in the State of California, and particularly described as follows, to wit: SE. ¼ of NE. ¼, NE. ¼ of SE. ¼, S. ½ of SE. ¼ of Sec. 9, Twp. 26 N., R. 6 E., M. D. M., in the district of land subject to sale at Susanville, California, was a portion of the public lands of the United States.

III.

That on the said 12th day of July, 1902, the said defendant William J. Gardenhire, who was then and there a resident and citizen of the United States, under the provisions of an Act of Congress of June 3, 1878, entitled: "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Lands States by Act of August 4, 1892, and of the regulations of the Department of the Interior of the United States and of the laws of the United States, filed in the Land Office of the United States at Susanville in the State of California, his certain sworn statement and application for the purchase of said lands.

IV.

That said sworn statement and application was in the manner and form prescribed by the Department

of the Interior of the United States, was in due form and was duly and regularly accepted by the Register and Receiver of said Land Office at Susanville, California, and among other matters contained the statement that the said applicant and affiant, to wit, the said William J. Gardenhire, did not apply to purchase said described land on speculation but in good faith to appropriate it to his own exclusive use and benefit and that he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever by which the title he might acquire to said lands from the Government of the United States, might inure in whole or in part to the benefit of any person or persons except or other than himself.

V.

That after proceedings duly had for that purpose, the United States of America, the complainant herein, on the 22d day of September, 1902, by the hand of its officers thereunto duly authorized, issued and delivered to the said defendant, William J. Gardenhire, its Register Certificate of Entry No. ———, in which certificate it was recited and declared that the said William J. Gardenhire, [11] in pursuance of law, had on the said 20th day of September, 1902, purchased of the Register of the United States Land Office at Susanville, California, said hereinbefore particularly described property for which the said William J. Gardenhire had made payment in full, as required by law and that on presentation of said certificate to the Commissioner of the General Land Office, he, the said William

J. Gardenhire, should be entitled to receive a patent for the hereinbefore particularly described property.

VI.

That on the 26th day of September, 1902, and subsequent to the filing of said sworn statement and application, the said William J. Gardenhire made, executed, acknowledged and delivered to the said defendant, Charles E. Gregory, his, the said William J. Gardenhire's grant, bargain and sale deed, under and by the terms of which he conveyed the said described land and property to said Charles E. Gregory.

VII.

That thereafter, to wit, on the 10th day of November, 1902, said defendant, Charles E. Gregory, by his deed of grant, bargain and sale duly signed, executed and delivered, conveyed to this defendant, the Curtis, Collins and Holbrook Company, the said hereinbefore described property.

VIII.

That subsequently, to wit, on the 28th day of October, 1905, the said complainant by its officers thereunto duly authorized, issued to the said William J. Gardenhire, its patent, under and by the terms of which it granted to the said William J. Gardenhire all the hereinbefore described property.

IX.

That this defendant, the Curtis, Collins and Holbrook Company purchased said land in good faith and paid therefor a valuable consideration, which consideration was paid and which purchase was

made by this defendant without knowledge or notice of any defect in the title or without knowledge or notice that the laws of the United States in the matter of the entry of said lands had not been in all things and respects complied with, and without knowledge or notice of any claim upon the part of the complainant to that effect and without knowledge or notice of any false statement or fraud practiced or perpetrated by the said William J. Gardenhire as in said bill of complaint alleged, or otherwise, or by any other person or at all. That prior to such purchase and payment by this defendant, the complainant, had issued to the said William J. Gardenhire as aforesaid, its duly authenticated certificate to the effect that the said land hereinbefore specifically described had been bought and paid for by the said William J. Gardenhire.

X.

That at the time this defendant purchased said described land, it, in good faith believed that the laws of the United States had in all things and in all respects been complied with in the matter of the original entry thereof and that the said William J. Gardenhire was entitled to receive a patent from complainant for the said lands. That relying upon such final receipt and certificate and without knowledge or notice of any fraudulent acts on the part [12] of the said applicant and without notice of any claim upon the part of the complainant that said Act of Congress had not been fully and in all respects complied with, this defendant purchased said lands and paid a valuable consideration therefor.

XI.

That said complainant herein, for more than five years and ten months after the issuance of said patent, took no action to set the same aside or annul the same, or call the same in question, notwithstanding the officers of said complainant, as this defendant is informed and believes, were, during all of said time, and prior to the issuance of said patent, well aware of all of the facts relative to the entry of said lands and concerning the title thereto. That this defendant was and is the innocent purchaser of said land in good faith and for a valuable consideration, and at the time of such purchase it had no information or knowledge of any fact or facts which would lead it to believe that the title to said land was not good or was in question, and that it had no notice, or knowledge, either actual or constructive, of any fraud on the part of its grantor or of said entrymen, or of any other person whomsoever.

XII.

And this defendant, in addition to the foregoing answer and as a further defense to the complainant's bill of complaint on file herein, avers that said complainant has been and is guilty of laches, in that more than six years have elapsed since the application mentioned in said bill of complaint was filed and more than five years and ten months have elapsed since the patent mentioned in said bill of complaint was issued, notwithstanding, as this defendant is informed and believes, said complainant and its officers, during the whole of said respective

periods and times, knew of the alleged facts set up in said bill of complaint which, it is alleged therein, constituted fraud.

XIII.

And this defendant, in addition to the foregoing answer, and as a further defense to the complainant's bill of complaint herein, alleges that the said patent mentioned in said bill of complaint was not issued by said complainant within six years before the said suit was brought and this allegation this defendant makes in bar of the complainant's bill of complaint, and prays that it may have the same benefit therefrom as if it had formally pleaded the same.

XIV.

And this defendant, in addition to the foregoing answer, and as a further defense to the complainant's bill of complaint herein, avers that the cause of action, if any there may be arising to complainant, on account or by reason of the several allegations or complaints in its said bill contained, did not accrue within six years before the said bill was filed and the subpoena and process issued thereon, served on this defendant, and this allegation this defendant makes in bar of the complainant's bill and prays that it may have the same benefit therefrom as if it had formally pleaded the same.

XV.

And this defendant, in addition to the foregoing answer, and as a further defense to the complainant's bill of complaint herein, avers that the cause of action, if any there may be arising to complain-

ant, on account or by reason of the several allegations or complaints in its said bill contained, did not accrue within six years before the said suit was brought, and this allegation this defendant makes in bar of the complainant's bill, and prays that it may have the same benefit therefrom as if it had formally pleaded the same. [13]

XVI.

And this defendant denies all, and all manner of unlawful combination, confederacy and conspiracy with which it is charged by said bill, and alleges that any other matter, cause or thing in said complainant's bill of complaint alleged material or necessary for this defendant to make answer unto, and which is not hereby well and sufficiently answered, is not true to the knowledge or belief of this defendant, all of which matters and things, this defendant is willing and ready to aver, maintain and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges, herein most wrongfully sustained.

CURTIS, COLLINS AND HOLBROOK COMPANY,

Defendant.

[Seal] By CHARLES A. SHURTLEFF,

Secretary.

CHARLES A. SHURTLEFF,

Solicitor and Attorney for Defendant, Curtis, Collins and Holbrook Company,

San Francisco Cal.,

CHARLES A. SHURTLEFF,

Of Counsel. [14]

State and Northern District of California,
City and County of San Francisco,—ss.

Charles A. Shurtleff, being duly sworn, deposes and says that he is an officer, to wit, Secretary of the Curtis, Collins and Holbrook Company, a corporation, one of the defendants, in the foregoing suit, that he has read the foregoing answer and knows the contents thereof; that the same is true to the best of his knowledge and belief. That he makes this affidavit for and on behalf of said defendant corporation.

CHARLES A. SHURTLEFF.

Subscribed and sworn to before me this 24th day of February, 1911.

[Seal] FLORA HALL,
Notary Public in and for the City and County of San Francisco, State of California.

Service by copy of the within answer is hereby admitted this 25th day of February, 1911.

ROBT. T. DEVLIN,
Attorney for Complainant.

[Endorsed]: Filed Feb. 25, 1911. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [15]

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

No. 15,189.

UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM J. GARDENHIRE et al.,
Defendants.

Replication to Answer of Curtis, Collins and Holbrook Company.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, for replication thereunto saith that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without this, and any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court

shall direct, and humbly as in and by its said bill it has already prayed.

ROBT. T. DEVLIN,
United States Attorney,
Solicitor for Complainant.

Service of the within replication by copy admitted this 18th day of April, 1911.

CHARLES A. SHURTLEFF,
Attorney for Defendant.

[Endorsed] Filed Apr. 19, 1911. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [16]

At a stated term, to wit, the March term, A. D. 1911, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 1st day of May, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,189.

UNITED STATES OF AMERICA

vs.

WILLIAM J. GARDENHIRE et al.

(Order Referring Suit to Master, etc.)

Upon motion of R. T. Devlin, United States Attorney and by consent of the attorneys for defendants, it was ordered that this suit be and the same

is hereby referred to H. M. Wright, Master in Chancery of this Court, to take and return the evidence herein and report to the Court his findings of fact and conclusions of law thereon. [17]

In the District Court of the United States, Northern District of California, Second Division.

(Formerly)

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

IN EQUITY—No. 15,189.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,

Defendants.

Report of H. M. Wright, Standing Master in Chancery on Final Hearing.

To the Honorable, the Judges of the Above-entitled Court:

The report of H. M. Wright, Standing Master in Chancery of the United States District Court for the Northern District of California, formerly Standing Master in Chancery of the United States

Circuit Court, Ninth Circuit, Northern District of California, respectfully shows:

This is one of seventy-nine causes referred to the Master on May 1, 1911, and by the Court consolidated for trial on November 7, 1912.

I have treated matters common to all cases in a comprehensive report made in the case of United States vs. Edward L. Cooksey et al., No. 15,077. The following portions of that report I hereby refer to and make a part of this report, namely:

1. The introductory matter thereof on Pages A, B, C, and [18] D; also the portion entitled, Review of decisions as to fraudulent timber and stone entries, beginning at page 1 of said report.

2. The portion entitled, A summary of the pleadings, together with a report on the motion by the Government to amend its complaint, beginning at page 59.

3. The portion entitled, Facts common to all the cases, together with reference to certain rulings on evidence and the like, beginning at page 66.

4. The portion entitled, The facts and findings on the defense of purchase for value without notice, beginning at page 91.

5. The portion entitled, The facts and findings on the defense of the statute of limitations, beginning at page 107 of that report.

In such matter there may be found occasional dates of deeds, Land Office proceedings, and the like, plainly applicable only to the Cooksey entry, and those, of course, do not apply to the present cause. After this incorporation by reference to the

other report, there will be left for special examination only the facts peculiar to the entry of William J. Gardenhire and my findings on the question of fraud in his entry, and also a summary of the findings and conclusions as to such entry. I also refer to and wish to have considered part of this report the schedules and tabulations annexed at the end of the Cooksey report.

In this case, unlike the case of Cooksey, the Government added as a defendant the Pennsylvania Lumber Company, a corporation, and in the bill wherever the Curtis, Collins and Holbrook Company was mentioned made the same allegations concerning the Pennsylvania Lumber Company. The Pennsylvania Lumber Company, however, filed its answer disclaiming all interest in the land. The evidence shows that it had nothing whatsoever to do with any of the entries in the consolidated cause, and it was in no wise concerned in this litigation. It was another company in which [19] the Curtises and Collinses were interested as stockholders.

In addition to the other particulars just above mentioned where the bill of complaint in this case differs from the bill of complaint in United States vs. Edward L. Cooksey, paragraph 6 of the bill herein contains the following matter, added at the end of that paragraph: "when they received said conveyances; that the officers issuing said patent relied on said false statements; that otherwise said patent would not have been issued; said statements, as all defendants at all times well knew were made

with intent to defraud the complainant out of said lands."

The statute of limitations is pleaded in the answer. All these answers are on printed forms, and the plea of the statute seems to have been made inadvertently, since the suit was brought well within the six years of limitation. The patent was issued on October 28, 1904. The bill of complaint was filed on July 25, 1910; all parties except Gardenhire were served during August, 1910. Gardenhire apparently had never been served.

I consider first the facts as to the entry of William J. Gardenhire.

SPECIFIC FACTS OF ENTRY OF WILLIAM J. GARDENHIRE.

William J. Gardenhire appeared as a witness for the United States. His testimony will be found at pages 1138–1155 of the record.

In 1902 he was a laborer at Prattville, California. He took up land through John H. Heppe, then a locating agent for George E. Tuman. Heppe came to him and suggested that he take up a piece of land, telling him there was a chance to make a piece of money, $100 and expenses. "He said to go out and look at the land and file on it; that is as much as I remember; we were to turn it over afterwards." (Tr. 1141.) "When Heppe made me this proposition I said, 'All right, I would do it.'" (Tr. 1144.) [20] Heppe told him he could dispose of his land. "All I knew was that I could get rid of it. He said substantially that if I took up the land I could dispose of it for $100 profit. He

did not say he would produce a purchaser. I understand from what took place between me and Heppe, I was obligated and bound to sell the property to anyone that Heppe might indicate. I could never had sold it to any other buyer; in other words that I was taking up this land for the benefit of Jack Heppe. My affidavit on file was not true."

In the party with Gardenhire that looked at the land when he went to Susanville to make application were his father, George D. Gardenhire (Case No. 15,187), Le Roy Benner (Case No. 15,100), and Charles Monroe (Case No. 15,188). On final proof Gardenhire got the $400 from his father in Susanville, he doesn't know where he got it, but all the evidence shows it was Tuman's money. There is no question that in this case the Government has proved that there was an agreement prior to entry to convey the land after entry.

W. J. Gardenhire made application for the land by sworn statement dated July 12, 1902. He made final proof and received Receiver's receipt and Register's certificate of purchase on September 20, 1902. Patent was issued on October 28, 1904. On September 26, 1902, he conveyed the land to Charles E. Gregory for $100 cash. This deed was recorded at the request of Mr. Shurtleff, secretary of the Curtis, Collins & Holbrook Company on April 18, 1910. Gregory conveyed to the Curtis, Collins & Holbrook Company on December 2, 1902, and this deed was recorded at the request of Mr. Shurtleff for the company on September 22, 1910.

SUMMARY OF SPECIAL FINDINGS AND CONCLUSIONS IN THIS CASE.

I have already found all the facts in this case either in this report or in portions of the report in the case of Edward L. Cooksey, incorporated herein by reference. Without casting aside any such findings, and without attempting to follow in detail [21] the allegations of the bill, many of which are admitted, a summary of the essential findings as to the entry of William J. Gardenhire may be made as follows:

1. That the sworn statement of said William J. Gardenhire, dated July 12, 1902, was false, as alleged in the bill of complaint in that prior thereto said Gardenhire had entered into an agreement with J. H. Heppe to convey the land so entered to such person as said J. H. Heppe should name after final certificate had issued; that said J. H. Heppe at that time was acting for George E. Tuman in the making of said agreement; that said George E. Tuman was at that time in partnership with C. H. Holbrook for the purpose of dealing in this and other timber lands; that the United States at no time prior to or at the issuance of patent had notice of said agreement and was deceived by said false statement; that said entryman, William J. Gardenhire, obtained the said patent from the United States by fraud as aforesaid.

2. That the patent of the United States was issued to William J. Gardenhire on October 28, 1904; that said land was by said William J. Gardenhire on the 26th day of September, 1902, conveyed to

Charles E. Gregory in consideration of $100; that said deed was recorded at the request of Charles A. Shurtleff, secretary of the Curtis, Collins & Holbrook Company, on April 18, 1910, in the proper records; that said Charles E. Gregory was a trustee for said Charles H. Holbrook in taking and holding title to said land; that said Charles E. Gregory by direction of Charles H. Holbrook on December 2, 1902, conveyed the said land, being the land involved in this suit and described in said patent, to Curtis, Collins & Holbrook Company, a corporation of California; that said conveyance was made in pursuance of a prior contract between said C. H. Holbrook on the one hand, and T. D. Collins and J. G. Curtis on the other, whereby Holbrook agreed to sell to Curtis and Collins or to said corporation, if so directed by Curtis and Collins, and said Curtis and Collins agreed to buy from said Holbrook the lands [22] described in said deed at the rate of either $7.50 or $10 per acre, part cash and part stock of said company; that on or about December 2, 1902, said corporation in consideration of said conveyance to it, issued to the said Curtis and the said Collins its stock at the rate of either $7.50 or $10 per acre conveyed, and said Curtis and said Collins paid to C. H. Holbrook a valuable consideration for said conveyance to said corporation, namely, part cash and part stock of said corporation transferred to said Holbrook, the total purchase price so paid being at the rate of $7.50 or $10 per acre; that on or about December 2, 1902, neither said T. D. Collins nor J. G. Curtis, nor the Curtis,

Collins & Holbrook Company knew or were charged with knowledge of the fraud charged in the bill of complaint, or any fraud at all; that said Curtis and Collins and the said corporation did not know and did not become charged with knowledge of said or any other fraud in the obtaining of said patent until or about the year 1908; that said Curtis, Collins & Holbrook Company, a corporation, was therefore at the time of its acquisition of the land conveyed to said William J. Gardenhire by said patent a *bona fide* purchaser for a valuable consideration and without notice or knowledge of any fraud against the United States; that said deed to said corporation was recorded in the proper office by Mr. Shurtleff, secretary for the company on September 22, 1910.

3. That the United States did not discover the facts upon which it bases the charges of fraud contained in the bill of complaint herein, and was not informed of facts sufficient to put it upon notice of said fraud until within six years prior to the beginning of this suit.

From the above findings of fact, I conclude:

That a decree should be made and entered dismissing the bill of complaint in the case of United States vs. William J. Gardenhire et al., No. 15,189. [23]

Supplemental Report.

Proceedings on the settlement of objections to the foregoing report have been set forth in the supplementary report in United States vs. Edward L.

Cooksey et al., No. 15,077, which is hereby referred to and made a part of this report.

All objections of the parties to the foregoing report have been considered, and are now overruled, and the said report is settled, signed and filed as my final report herein, and the parties notified by mail this 21st day of February, 1914.

H. M. WRIGHT,
Standing Master in Chancery.

[Endorsed]: Filed Feb. 21, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [24]

In the District Court of the United States, in and for the Northern District of California, Second Division.

(Formerly)

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

IN EQUITY—No. 15,189.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK, COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Defendants.

Objections and Exceptions to the Findings of Fact and Conclusions of Law of the Report of the Master in Chancery Filed in the Above-entitled Matter.

Exception A. Complainant excepts to the summary of special findings and conclusions of the Master herein on the ground that the Master erred in making said special finding number 2 (p. 5 of said report). That for specifications of said exception we refer to and make a part hereof, exception number 66, A, B, C and D thereof, to the exceptions to report of Master in the case of United States vs. Edward L. Cooksey et al., No. 15,077.

Exception B. Complainant saves herein exceptions numbers 68, 69 and 70 of the exceptions to report of Master in the case of United States vs. Edward L. Cooksey et al., No. 15,077, and makes them a part hereof as though set forth in full herein. [25]

Exception C. Complainant saves herein all exceptions contained in the exceptions to report of Master in case of United States vs. Edward L. Cooksey et al., No. 15,077, which apply to any portion of said report which is general in its application to all entries involved in said 79 cases consolidated or to this particular entry, as though the same were set forth in full herein.

Exception D. That the reason for making the exceptions to the Master's report herein by way of reference and not in full is set forth in exception number 71 of the exceptions to report of the Mas-

ter in the case of United States vs. Edward L. Cooksey et al., No. 15,077, and the same is referred to and made a part hereof as though set forth in full herein.

JOHN W. PRESTON,
United States Attorney,
Attorney for Complainant.

EARL H. PIER,
Assistant U. S. Attorney,
Of Counsel.

Service of the within exceptions to Master's draft report by copy admitted this 10th day of Feb., 1914.

CHARLES A. SHURTLEFF,
J. G. DE FOREST,
Attorneys for Defendant.

[Endorsed]: Filed Feb. 21, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [26]

At a stated term, to wit, the November term, A. D. 1916, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Friday, the 19th day of January, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15189.

UNITED STATES

vs.

WILLIAM J. GARDENHIRE et al.

(Order Overruling Exceptions, etc.)

In accordance with the memorandum opinion filed, it is ordered that the exceptions to the Master's Report be overruled, that the Master's Report be and is confirmed, and that a decree be entered in conformity with said report. [27]

In the District Court of the United States, in and for the Northern District of California, Second Division.

(Formerly)

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

IN EQUITY—No. 15,189.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, JOHN DOE, RICHARD DOE, ALBERT DOE, HENRY DOE, GEORGE DOE and FREDERICK DOE,

Defendants.

Decree Confirming Master's Report and Dismissing Bill of Complaint.

This cause came on to be heard before this Court at this term, and it was argued by Counsel for the respective parties, and thereupon, upon consideration thereof,

IT IS ORDERED, ADJUDGED AND DECREED as follows, viz.: That each of all of the objections and exceptions to the Master's Report, returned herein, be and they are overruled; that the said Master's Report be, and the same is confirmed in every respect, and that the Bill of Complaint of said Complainant, United States of America, in the above-entitled cause, be and the same is hereby dismissed without cost to either party.

Done in open court this 13th day of April, 1917.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed and entered April 13, 1917. Walter B. Maling, Clerk. [28]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOL-

BROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as Follows: No. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including August 10, 1919, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, up to and including the 10th day of August, A. D. 1919:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 10th day of August, A. D. 1919, without prejudice to defendants' objection that the time has elapsed in which such order can be made.

Dated this 9th day of June, 1919.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed Jun. 9, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [29]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as Follows: No. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including October 10, 1919, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, up to and including the 10th day of October, A. D. 1919:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 10th day of October, A. D. 1919, without prejudice to defendants' objection that the time has expired in which such an order can be made.

Dated this 11th day of August, 1919.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California.

[Endorsed]: Filed Aug. 11, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [30]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as Follows: No. 15,078, 15,091, 15,097,

15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including December 10, 1919, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, up to and including the 10th day of December, A. D. 1919:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 10th day of December, A. D. 1919.

Dated this 26th day of Sept. 1919.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed Sep. 26, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [31]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including March 1st, 1920, for Filing Statement of Evidence.

These causes coming on to be heard upon application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal, as provided for in Equity Rule No. 75, up to and including the 1st day of March, A. D. 1920:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for

in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 1st day of March, A. D. 1920.

Dated this 9th day of December, 1919.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California.

[Endorsed]: Filed Dec. 9, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [32]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including June 1st, 1920, for Filing Statement of Evidence.

These causes coming on to be heard upon the appli-

cation of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal, as provided for in Equity Rule No. 75, up to and including the 1st day of June, A. D. 1920;

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 1st day of June, A. D. 1920.

Dated this 27th day of February, 1920.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California.

[Endorsed]: Filed Feb. 28, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [33]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being

Numbered in the District Court Clerk's Office as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Defendants.

Order Enlarging Time to and Including September 1st, 1920, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal, as provided for in Equity Rule No. 75, up to and including the 1st day of September, A. D. 1920:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 1st day of September, A. D. 1920.

Dated this 22d day of May, 1920.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed May 22, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [34]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 15,189.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM J. GARDENHIRE et al.,

Defendants.

Petition for Appeal.

To the Honorable WILLIAM C. VAN FLEET, District Judge, etc.

The above-named plaintiff feeling itself aggrieved by the decree made and entered in this cause on the 13th day of April, 1917, does hereby appeal from the said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith, and it prays that its appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the Southern Division of the Northern District of California.

Dated, October 11, 1917.

JNO. W. PRESTON,
United States Attorney,
ED. F. JARED,
Asst. United States Attorney,
Solicitors for Plaintiff.

[Endorsed]: Filed Oct. 11, 1917. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [35]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 15,189.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM J. GARDENHIRE et al.

Order Allowing Appeal.

On motion of Ed. F. Jared, Assistant United States Attorney, solicitor and counsel for plaintiff, it is hereby

ORDERED that an appeal to the Circuit Court of Appeals for the Ninth Circuit of the United States from the decree heretofore filed and entered herein on April 13th, 1917, be, and the same is hereby allowed and that a certified transcript of record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit.

Dated, October 11th, 1917.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Oct. 11, 1917. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [36]

In the District Court of the United States in and for the Northern District of California, Second Division.

IN EQUITY—No. 15,189.

UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM GARDENHIRE et al.,
Defendants.

Assignments of Error.

Now comes the plaintiff in the above-entitled cause, by John W. Preston, United States Attorney for the Northern District of California, and Ed. F. Jared, Assistant United States Attorney for the Northern District of California, and says that the decree entered in the above-entitled cause on the 13th day of April, 1917, is erroneous, unjust and prejudicial to the plaintiff in the following particulars:

I.

The Court erred in failing and refusing to enter a decree cancelling the patent issued on the 28th day

of October, 1904, and declaring the land described in the Bill of Complaint to be public land of the United States of America, and that the defendants and all persons claiming under them are without any right, title, interest, claim or right of possession in and to said land.

II.

The said Court erred in making and entering of record a decree dismissing the Bill of Complaint herein. [37]

III.

The said Court erred in overruling the following exceptions taken by the plaintiff to the Master's report, to wit:

8. Complainant excepts to the finding and report of the Master (page 70) "that the corporation was to acquire title to the lands through Curtis and Collins."

9. Complainant excepts to the finding and report of the Master (page 70) that "in effect it was a transaction of purchase and sale between Holbrook as vendor and Curtis and Collins as vendee."

10. Complainant excepts to the finding and report of the Master (page 70) that "in this transaction the parties have been seen to be dealing at arm's-length."

11. Complainant excepts to the finding and report of the Master (page 70) in that said report fails to take cognizance of the fact testified to by T. D. Collins (page 2023) that he insisted that Charles H. Holbrook take stock in said corporation and have an interest in said business as he wanted him to be

associated with the business so that there would be three instead of two in the firm and instead of the firm being "Curtis and Collins," it should be "Curtis, Collins and Holbrook."

12. Complainant excepts to the finding and report of the Master (page 71) that the relation between Tuman and Holbrook of equal partnership, "was not known as such by the other parties," on the ground that the same is not sustained by the evidence in that it appears from the testimony of E. S. Collins that during the early operations in Plumas County he learned of the relationship between Holbrook and Tuman.

13. Complainant excepts to the finding and report of the Master (page 71) that "It must be perfectly apparent that as regards all these lands acquired by the use of forest reserve scrip the relationship between Curtis and Collins and the defendant company, their assignee, on the one hand, and Holbrook and Tuman on the other. was in no [38] sense that of partners or of principal and agent" in that the same is not sustained by the evidence and that the same is not a proper construction of the contract referred to as Exhibit "B" establishing the relationship between the various parties.

14. Complainant excepts to the finding and report of the Master (page 71) that "It is perfectly clear that Curtis and Collins and the company on the one hand and Holbrook and Tuman on the other, the latter undisclosed, dealt at arm's-length as adversary parties in any transaction of purchase and

sale," in that it is not supported by the evidence and is contrary to the evidence as shown by the various contracts drawn between the parties and introduced in evidence and the testimony of T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis, Geo. E. Tuman, Chas. E. Holbrook, Jr., and Chas. A. Shurtleff.

15. Complainant excepts to the finding and report of the Master (bottom page 71, top page 72) that "Collins stated that they would be willing to take these lands if the titles were absolutely good," and "E. S. Collins assented to the acquiring of the timber and stone entries if everything about the entry was fair, above-board, and legal," and "The details were not discussed and undoubtedly Collins and Curtis not only desired that the title should be acquired in a legal manner, but had every confidence in Holbrook that they would be so acquired," on the ground that the same is not supported by the evidence and that it fails to take into consideration the circumstances under which said conversations were had and the total disregard of proper business safeguards in allowing the actions of Holbrook in carrying out the acquiring of the timber and stone lands as is evidenced by the testimony given by D. G. Curtis, J. G. Curtis, T. D. Collins, E. S. Collins, G. E. Tuman, Chas. H. Holbrook, Jr., Chas. E. Gregory, and Chas. A. Shurtleff.

18. Complainant excepts to the finding and report of the Master (page 73) that "There is no evidence at all that the Curtises or Collinses or the

Curtis, Collins and Holbrook Company, after its organization, supplied Holbrook and Tuman or either of them or anyone else [39] with money to acquire timber and stone entries, as was done by them in the case of the scrip. The money used was that which represented Holbrook's and Tuman's profit on the scrip sales" in that the same does not take into consideration the fact that to carry on these operations would require close on to $100,000, and that under the terms of the contract Holbrook did not receive in cash over $10,000 as profits out of the same with which to carry on said operations, and in that the Master fails to take into consideration the fact that portions of the money used in the acquiring of the lands herein were deposited in the Bank of California in the name of Collins and Holbrook and in this connection complainant specifically excepts to the ruling of the Master during the taking of testimony refusing to admit the account of Collins and Holbrook with the Bank of California during the years 1902 and 1903 and 1904 in evidence for the purpose of establishing that Collins had an interest in the fund.

19. Complainant excepts to the finding and report of the Master (page 73) giving weight to the testimony of Tuman that "There was at all times available for this purpose, the fund of at least $30,000 in cash," in that, as Tuman testifies, Holbrook had charge of the cash during the whole of these transactions and as he needed the money the same was furnished him by Holbrook for carrying on the operations.

21. Complainant excepts to the finding and report of the Master (page 73) that "All this money was handled by Holbrook and kept in his name," in that the same is not supported by the evidence in that it appears that part of the money used in the acquiring of the lands was kept in the name of Collins and Holbrook in the Bank of California.

32. Complainant excepts to the finding and report of the Master (page 79) that "I am not able to give this fact of the assembling of the lands in Gregory any special significance as regards the question of fraud in these entries," in that the same is not supported by the evidence in that all the evidence tends to show that said lands were taken in the name of Gregory for the purpose of concealment and for the purpose [40] of assisting Holbrook and Tuman and the corporation to conceal the fraud and that it does not take into consideration the fact that Tuman tells one story upon this point and that Holbrook tells another story upon this point; that the answer of the defendants failed to disclose that they were purchasing the lands from Holbrook and as a matter of fact would lead one to believe at all times that the company was purchasing the lands from Gregory; that when Tuman was asked before the trial what was the reason for taking the deeds in Gregory's name, he refused to give any explanation, stating that he preferred to keep that matter to himself until called upon to testify on the stand; further, that Gregory being unconnected in any business way with Holbrook or Tuman and not

being known in the vicinity to be operating in timber lands, the deed to him would not bear the same significance to a person making an investigation as it would to Holbrook or Tuman who were persons well known in the field and known to be operating in timber lands and in a great many cases the entryman did not know the name of the person to whom he conveyed the land and it would therefore be impossible to locate the said Gregory in those cases, and further it fails to take into consideration the fact that the deeds from the entrymen to Gregory were kept off the records until after patent issued, although the deeds from Gregory to the corporation had been executed for a period of over a year prior to the issuance of patent; and further, it fails to take into consideration the fact that in the lending of the money Tuman and Holbrook did not use their own names to lend the money in, but used the name of Elam in a few instances, but in the majority of cases used the name of Lewis, who was also a person unknown in the community. Also it fails to take into consideration the manner in which the deeds of most of the entrymen were executed, the general plan being to take the entryman in before a notary where the deed had already been prepared, telling him to sign the papers and paying him his $100.

34. Complainant excepts to the finding and report of the Master [41] (page 80), that "The transfer of the lands involved in these suits was actively concluded between D. G. Curtis, representing Curtis and Collins, the purchasers, and Hol-

brook in his own behalf and that of Tuman, the latter being undisclosed," in this, that the only testimony on the subject of the actual payment of the money to Holbrook is that of D. G. Curtis in which he states that he paid for the same with checks of the company and that all the witnesses testified to the purchase of the land by the company from Mr. Holbrook and that the only evidence that it was Collins and Holbrook who might have been buying the lands, is contained in the leading and suggested questions of counsel for the defendant. And further excepts to this finding on the ground that the evidence outside of the bald statement of the various witnesses on behalf of the defendant that the company purchased the land from Holbrook tends to show and establish that Holbrook was not selling the land to the company as an independent operator, but was really the agent of the company in the purchasing of the lands and that at all times he was purchasing the lands for the company and that at the time the transaction was taking place, it was so considered by all the stockholders of the corporation, as is evidenced by the testimony of D. G. Curtis, G. E. Tuman, J. G. Curtis, E. S. Collins, T. D. Collins, and Chas. Holbrook, Jr., in that they discussed the method of acquiring the land by buying entries made by timber and stone entrymen, that they were all suspicious of that method of acquiring timber land titles, that they actually did not believe that a solid body of timber land could be acquired by this means legally and successfully, that a solid body of timber land was actually acquired by

this method, and that the corporation and none of its officers ever in any way undertook to check up Mr. Holbrook to see that he had deeds from the entrymen for the land which the company got through the conveyances from Mr. Gregory, and in that it further fails to take into consideration the fact that Holbrook had control of the finances of the corporation and all of its affairs and ran its business solely, from the time of its inception until he left [42] the company, with merely the acquiescence of all parties that he might pay for said land as high as $10 an acre and that said acquiescence was obtained through the agency, efforts and influence of D. G. Curtis, who was to be paid a commission on the purchase price of the lands, and further that at the time the timber and stone entries were purchased Mr. E. S. Collins knew of the relations between Holbrook and Tuman, and Tuman was not an undisclosed party to the transaction. (Note testimony of E. S. Collins.)

35. Complainant excepts to the finding and report of the Master (page 80) that "The money paid for these timber and stone lands was paid by Curtis and Collins and not by the company," in that the distinction made by the Master is not made by the evidence and that all parties, at the time the transaction was taking place, were considering that Collins and Curtis were putting up the money and Holbrook was putting up his time and the company was getting the title to the land and Curtis and Collins were getting stock at par for the amounts of money

which they advanced and Holbrook was getting stock and money for the lands turned in.

36. Complainant excepts to the finding and report of the Master (page 80), "This is in analogy as to the contract requirements of scrip lands, which, as has been seen (*supra*, p. 70), contemplated the securing of lands by other means if necessary than that of using scrip," in this, that the evidence shows that when they came to acquiring the land under the timber and stone act, the defendant corporation and T. D. Collins, E. S. Collins, D. G. Curtis, J. G. Curtis, C. H. Holbrook, Jr., and Sr., and Geo. E. Tuman, went into the transaction relying entirely upon each other's oral word, without the scratch of a pen to evidence the transaction in any way and without having the details of the transaction in any way checked up by an attorney. In short, all the methods of precaution that were taken by the various parties in acquiring the land by the so-called scrip method, which was legal, were abandoned when it came to acquiring the land under the Timber and Stone Act, which was illegal. [43]

37. Complainant excepts to the finding and report of the Master (page 80) that "A transcript of the account (Curtis, Collins and Holbrook Co. with the Bank of California) was produced and not introduced by the Government. The contention of the United States was that Holbrook was paid by the company. I must assume, therefore, that the account showed only what other witnesses testified was the fact (T. R. 3072), namely, that except where the company bought direct, its expenditures were only

for trivial matters and not involving the purchase of those timber and stone entries," in that the same is not supported by the evidence in that the only person who testified to any money being paid to Chas. H. Holbrook, Sr., was D. G. Curtis, in which he states that he signed the check paying for these lands and that it was the Curtis, Collins and Holbrook check. The testimony of Holbrook, Jr., is to the effect that he knows nothing of the manner in which his father received pay for the lands. The burden being upon the defendant, who was a *bona fide* purchaser, the Government was entitled to rely on the testimony of the defendant's witness, D. G. Curtis, and if there was anything in the account which tended to offset Mr. Curtis' testimony, the burden was not upon the Government to introduce the evidence but upon the defense and no adverse assumption should be made to the Government for failure to introduce this record in view of the fact that before that time the Government had offered the account of Collins and Holbrook with the Bank of California, which was refused admission, in evidence and in view of the fact that the personal account of Chas. Holbrook, Sr., was destroyed by the fire of 1906, and in view of the fact that the defense had an equal opportunity to introduce this account in evidence and failed to do so.

38. Complainant excepts to the finding and report of the Master (page 81) that "these resolutions recited the proposal by T. D. Collins and J. D. Curtis, in writing, to sell the lands in question to the company in return for stock issued to them at

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par and the acceptance of these proposals by the company," in that, the same does not [44] take into consideration the testimony of T. D. Collins, J. G. Curtis, D. G. Curtis, E. S. Collins and G. E. Tuman, to the effect that so far as the Curtises and the Collinses were concerned, it was purely a question of putting up the money and receiving the stock to the corporation; the details of getting the title into the corporation were none of their concern and the evidence does not in any way show that either Collins or Curtis considered that they were buying the timber lands themselves but that they were putting up the money, getting stock for the same and that the corporation was getting the timber land.

51. Complainant excepts to the finding and report of the Master (page 96) that "The facts of the cases at bar are on all-fours with the cases just quoted," in that D. G. Curtis, J. G. Curtis, T. D. Collins, E. S. Collins, G. E. Tuman and Chas. Holbrook, Jr., according to their testimony, all agree on the fact that the titles on behalf of the company at the time of their being acquired were examined by no one and that the evidence shows that everything was left to Holbrook to determine whether or not the land was the character of land which the company desired, whether it had sufficient timber on it, whether the title was good or not, whether or not the title had actually been passed to the company, the paying for the land was under his own control and was paid on his and his son's statement and on no one's else.

52. Complainant excepts to the finding and report of the Master (page 96) that Curtis and Col-

lins on the one hand and Holbrook on the other, were plainly seen to have been dealing at arm's-length in an adversary relation as vendee and vendor respectively," in that there is no evidence to support said finding in the record, and that it fails to take into consideration the fact that at the very outset of negotiations Mr. Collins insisted on Mr. Holbrook's becoming a member of the concern and taking a substantial interest therein and that thereafter Holbrook did take a substantial interest therein and increased his holdings in the company over and above the amount required by the original contract, that he had practically the exclusive [45] charge of the affairs of the corporation and that after the first transaction relating to the 42,000 acres of land acquired by scrip, the precautions ordinarily taken by men buying timber land were not followed, that no examination of titles was had, that Holbrook's word that he had the titles was taken, also his word was taken that the deeds covered the quantity of land that he represented, that no examination of the lands was made by either Curtis or Collins or anyone else independent of Holbrook as to the quality and quantity and character of timber upon the lands or that the lands were timber in their character at all, and that in all their relations it is shown that Holbrook and Curtis and Collins understood each other perfectly and were all working to the common end of getting the title to the timber land that was at that time in the Government, into the corporation which was to be formed and which

was actually formed for the purpose of holding the timber lands.

54. Complainant excepts to the finding and report of the Master (page 96) that "Curtis and Collins made no loans of money to acquire these timber and stone lands as did Clark," in that the same is not supported by the evidence, in that it fails to consider the facts that the timber operations carried on by Holbrook were too extensive for him to be able to carry on on the small capital of $10,000 to which he was entitled and which was paid him under the terms of his first contract with Curtis and Collins, and further that part of his operations were carried on prior to the time of his receiving the money from Curtis and Collins under his first contract as he could not have received the money under the contract prior to the formation of the corporation, to wit, the 15th day of August, 1902, and that Holbrook who had a personal account in the Bank of California, should have deposited the money with which he carried on these timber operations in the name of Collins and Holbrook in the Bank of California.

55. Complainant excepts to the finding and report of the Master (page 96) that the money was Holbrook's own, the profit of his previous [46] dealings with the scrip lands in that the evidence establishes that Holbrook did not have the money to carry on these extensive dealings, as the profits were not enough nor did he receive them in time to carry on these dealings.

58. Complainant excepts to the finding and re-

port of the Master (page 99) that "It thus conclusively appears that except from conclusions that may follow from the facts that Holbrook was at the time that these titles were acquired, vice-president and manager of the Curtis, Collins and Holbrook Co., neither J. G. Curtis, nor T. D. Collins, nor the company itself, nor any of its officers, at any time had any actual knowledge or notice or any constructive notice arising from the facts that would put them on inquiry as to the fraud which the Government claims constitutes its equity," and to all the findings of fact preceding said finding and the discussions of the same beginning with page 96, continuously up to said findings, in that, said findings and discussions fail to take into consideration the fact that at the time Holbrook discussed with the Collinses and Curtises the advisability of purchasing timber and stone entrymen's claims, E. S. Collins knew that this method of acquiring timber lands had resulted in scandal in Washington and that he was desirous that no scandal arise in connection with their lands, that he did not believe that a solid body of timber land could be obtained legally under the Timber and Stone Act for if they were acquired legally someone else would buy out the entrymen, and that the company did, by this method, acquire a solid body of timber land, namely, the land which Remick had entrymen take up; and that other portions of the land taken up were also solid and adjoined land which the Curtis, Collins and Holbrook Co. had previously acquired by the scrip method; and the fact that in all their discussion, which was

considerable, about acquiring land by the purchase of claims taken up under the Timber and Stone Act, they never discussed or consulted with their attorney, C. A. Shurtleff; and that after having decided upon the acquiring of land which had been taken up under the [47] Timber and Stone Act, they should never have discussed the matter of the method of acquiring these timber claims again with Mr. Holbrook; that there was no investigation made of the titles in any way, either that the lands had ever been taken up under the Timber and Stone Act or that the entryman and his successor in interest had ever made deeds conveying the title to said lands to the company; and that the deeds from the entrymen were obtained so shortly after the date of making final proof, which of itself has been held to be not sufficient to charge notice, yet taken with all the other circumstances in this case is indicative either of actual knowledge of the fraud or a careful and assiduous effort on the part of the Curtises and Collinses not to learn of any fraud; and the fact that the slightest investigation of the titles would have established, accepting their own construction of the facts, if not that a fraud had been perpetrated upon the Government, that a fraud had been perpetrated upon them in that Holbrook was representing that he could not get the land for $7.50 per acre, whereas as a matter of fact, he was getting most of it for about $3.75 per acre, the discovery of which fraud would have meant Holbrook's ruination, and the fact that at the time they were purchasing these lands, they were not purchasing the legal title but

were merely purchasing the equitable title which of itself should have made them more careful in regard to the title which they were acquiring; and the fact that the deeds from the entrymen to Gregory had not been recorded at the time the corporation got its title; and the fact that the corporation did not place its deeds from Gregory of record in a great many cases until after the institution of these suits, although at the time that Holbrook sold out it became definitely and certainly known that the corporation's deeds had not been placed of record; and the fact that the corporation did not have the deeds from the entrymen to Gregory recorded until after patent had issued in each case; and the fact that Tuman was paid $150,000 for his 200 shares of stock which Collins did not believe to be worth more than half the price paid, the excuse [48] being given for such price that he was afraid that a third person, Durphy, whom he did not wish to have in the corporation, was going to get the stock, which excuse becomes trivial when it is considered that over 5,000 shares of the stock had been issued and that T. D. Collins and E. S. Collins owned all of said stock with the exception of the 200 shares which Tuman owned, and had absolute control of the corporation and that said corporation was a holding company, holding nothing but timber land and was not operating any of its timber and that said stock was a source of expense and would be for years to come; and that Tuman's stock was purchased after the commencement of these suits; and that Tuman refused to state to the Government's attorney before

he went on the stand to testify, why title was taken in the name of Gregory from the entrymen, and the source of the money which was used for operating in the field in acquiring these lands; and the fact that in Tuman's settlement with Holbrook he did not get more than half of what he was entitled to and that said contract of settlement was negotiated by T. D. Collins; and the fact that J. E. Remick, one of the locators was always in court and the peculiar changes in the testimony of A. W. Savercool and Warren Stark during the course of the trial taken in connection with James Savercool's and Willis Savercool's testimony, and the character of the testimony of James Stark, Burt Burris, and other witnesses, and the fact that in the purchase of some of the lands Holbrook had to pay $10 an acre for the land and that the corporation got the land for the price or $10 per acre; and the fact that Collins knew that on other lands than the land acquired under the Timber and Stone Act, and the land acquired under the contract, Exhibit "B" in evidence, Holbrook did not get any commissions from the company, although he negotiated the purchase for the company and was its purchasing agent therein; and the fact that Holbrook was the agent for the company to determine the character, quantity and quality of the timber on the lands purchased and the fact that Holbrook was the agent of the company to determine that the titles were [49] regular; and the fact that Holbrook was the agent of the company to determine that the title had been prop-

perly vested in the company; and the fact that Holbrook was the managing director and vice-president of the corporation and had complete charge of all the papers and records of said corporation, and that his signature was necessary on the corporation checks.

In support of the foregoing exception, we rely on the transcript of the testimony of T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis, Chas. H. Holbrook, Jr., G. E. Tuman, Chas. A. Shurtleff, J. E. Remick, John Heppe, Irving Moulton and the testimony of all the entrymen as showing the method of procedure in all cases in taking up the land and the testimony of Edward Brase, Burt Burris, F. C. Hall, A. A. Hall, Mrs. Cora Hall, Chas. E. Gregory, W. G. Lawrence, James Perini, Frank Sorsoli, Chas. E. Swayze and Arthur E. Vollmer.

59. Complainant excepts to the finding and report of the Master (page 101) that "It therefore comes to this: That Tuman is charged with notice of whatever fraudulent agreement Remick or Heppe may have made with an entryman by a presumption in the law of agency; that Holbrook likewise is charged with notice by reason of a presumption arising out of a relation of partnership between him and Tuman and that the corporation is charged with notice by reason of a presumption arising out of Holbrook's tenure of the office of vice-president of its board. It does not strike one as just that the defendant corporation should lose

the property which it has purchased by reason of this pyramiding of legal fiction," in that it fails to take into consideration the fact that Holbrook, during the time these lands were being acquired by the entrymen from the Government, was frequently in the field having consultations with Tuman and was handling the money which was advanced to the entrymen through Tuman for the purpose of paying the Government for the land taken up by the entrymen; that the general scheme of operation which was carried on by Tuman and Holbrook in Plumas County contemplated the fraudulent acquiring of [50] the land by the entrymen and that, as Tuman states, Holbrook knew everything that he knew about the operations of acquiring the timber land, and therefore Holbrook's knowledge is more than that of a mere presumption of legal fiction but must be held to be actual knowledge.

60. Complainant excepts to the finding and report of the Master (page 101) that "When the company took the conveyance from Gregory, though Holbrook was its vice-president at the time, he was at the same time in an adversary relation, he himself being the seller of the property. It is idle to say that he would not disclose any knowledge of fraud in the titles which he is presumed to possess (contrary to the actual fact). Holbrook was not buying this land for the company. He was buying it from others and selling it to the company at a considerable profit above its cost to him, which profit he retained and was expected to retain. It cannot be assumed that he told or would tell the

company of any defect in its title and allowing such assumption in reason, the law does not raise any presumption of notice," in that the evidence fails to establish any adversary relation between Holbrook and the corporation; that it fails to take into consideration the fact that at the outset, before any timber lands had been acquired under the Timber and Stone Act, Holbrook had a discussion with the Curtises and Collinses as to the advisability of obtaining timber land by buying out settlers who had acquired land under the Timber and Stone Act; that there was at that time a lot of land to be acquired and that there was no scrip to acquire it with and that he was authorized by them in the interests of the company that was to be formed to buy out entrymen who had acquired title to the land under the Timber and Stone Act and that he should receive as compensation for his services the difference between what he would have to pay the entrymen for the land and $7.50 an acre, which the company would pay him for the land; that at the time this conversation took place the Collinses did not believe that a solid body of timber land which had been taken up under the Timber and Stone Act could be legally acquired by them, [51] in that if legally acquired, someone else would come in and buy the timber land from the entrymen; that Holbrook was made the agent for the purpose of determining the character, quantity and quality of the timber that was upon the land and that it was adequate and satisfactory; that Holbrook was made their agent for the purpose of acquiring the title

and seeing that the entries were regular in form and in conformity with law, and the instruments of conveying the title of the entrymen to the corporation were in form legally sufficient; and that no attorney was employed to see that the title had been conveyed to the company; that Holbrook was relied upon for the whole matter and was the agent of the company for that purpose; that at the time Holbrook started on his plan of operations in Plumas County he was not buying the land for himself from the entrymen, but he was buying it with the definite understanding with the Curtises and Collinses that the corporation should get the land; that there was no attempt on the part of the corporation or any of its officers in the slightest to check Holbrook in his operations and as a matter of fact, there was a studious avoidance on their part of the ordinary business precautions that exist between vendor and vendee in connection with every act on the part of the corporation and the Curtises and Collinses in the acquiring of the title to the timber lands by the corporation, and that the circumstances of this case do not bring the case within the exception to the rule that where the agent's interests are antagonistic to that of the corporation, his knowledge is not presumed to be that of the corporation in that in carrying out the details of this transaction it appears that the Curtises, Collinses and Holbrooks were all working in harmony with perfect confidence and an understanding between them, with all of them fully alive to the situations and dangers under which the land was being acquired and the

leaving of everything to Holbrook to carry on in his own way unhampered. If the younger Curtis and the two Collinses did not know of Holbrook's fraudulent operations, the same was due to their wilfully closing their eyes to circumstances [52] which, at the outset, they did know must occur if a solid body of timber land was delivered to the Curtis, Collins and Holbrook Co. by the purchasing of the lands taken up by entrymen under the Timber and Stone Act.

60A. Complainant excepts to the finding and report of the Master (page 104) that "If here not only Holbrook but Curtis and Collins had been charged with notice, there is no question but what the company would be held to be so charged," in that it infers that Curtis and Collins did not have notice of the fraud, which fails to take into consideration all the circumstances of the relations between Holbrook and Curtis and Collins and the full understanding that existed between them and if D. G. Curtis and the two Collinses did not know of the manner of the operations of Holbrook, it was due to a wilful closing of their eyes to the things which they knew must take place in order to deliver a solid body of timber land to the corporation.

61. Complainant excepts to the finding and report of the Master (page 105) that "Assuming that the transaction here in question occurred between Curtis and Holbrook Co. and Holbrook, it has been seen that their relations were that of vendee and vendor respectively." "Remick and the others therefore could in no sense be considered

subagents of the company; they were agents of Holbrook and Tuman only. The notice therefore which they had by reason of their dealings with Holbrook may be imputed to Holbrook but could not be imputed to the company," in that this proposition assumes the point in issue to be whether or not Holbrook was the agent of the corporation. If Holbrook was the agent of the corporation in these transactions and in the acquiring of these lands, Remick and the others who assisted in the locating must also be considered as subagents of the company and further, it fails to take into consideration the fact that Holbrook was thoroughly familiar with the operations in the field in the acquiring of the lands from the Government.

62. Complainant excepts to the finding and report of the Master [53] (page 105) that "In what has gone before I have assumed that the transaction was indicated by the way in which the deeds ran, that is to say, that Holbrook sold to the Curtis, Collins and Holbrook Company. As a matter of fact, as has been seen before, it is not an exact statement. The entrymen conveyed the title to Gregory who held as trustee for Holbrook. Holbrook meanwhile was under contract to sell these lands to T. D. Collins and J. G. Curtis at $7.50 and $10.00 an acre, part cash and part stock of the corporation. Curtis and Collins at no time paid cash into the corporation for their stock, but made a proposition to transfer land for stock which was accepted. Undoubtedly the settlement as between Holbrook and Curtis and Collins and between Cur-

tis and Collins and the Curtis, Collins & Holbrook Company was simultaneous. Though Gregory after the entrymen's deeds held the legal title, the entire equitable title rested in Holbrook his beneficiary, and when Holbrook fulfilled his contract with Curtis and Collins this equitable title passed to Curtis and Collins, Gregory becoming their trustee for a point of time, and at their direction, in pursuance of their proposal to the company, Gregory conveyed the legal title to the company," in that there is no evidence to support said finding and as the Master himself says, in his part of the report, all of this is more or less theoretical. The evidence shows that the deeds from the entrymen were taken to Gregory; that Gregory conveyed to the Curtis, Collins and Holbrook Company. The testimony of Dan Curtis is to the effect that the corporation paid Holbrook for the land. The same is true of the testimony of T. D. Collins and E. S. Collins. The evidence that Curtis and Collins were buying from Holbrook is contained entirely within the leading and suggestive questions of counsel for the defendant which the witnesses themselves are unable to keep in mind, except when having it suggested to them continually, showing that at the time the transaction took place, all the parties believed that the corporation was purchasing the land not from T. D. Collins and D. G. Curtis, but from someone from whom Holbrook had [54] negotiated the purchase of the land, and that at the time the transaction took place they knew that Gregory was not the real person in interest, because, as T. D.

Collins states, he does not know why the land was taken in the name of Gregory, except that he understood that it had to be assimilated in someone's name in order to meet the legal requirements of this state to get the title into the corporation. As T. D. Collins testifies, he deposited his money in the Bank of California, and got his stock, one share representing $100 which he put up. The manner of paying for the lands was attended to by whomever was out here.

63. Complainant excepts to the finding and report of the Master (page 106) that "If Curtis and Collins had paid Holbrook part cash and part from the stock which they already had by reason of the scrip transactions, they might have taken a deed of the legal title directly from Gregory and later conveyed that legal title by another deed to the Curtis, Collins and Holbrook Company," in that there is no evidence to show that Curtis and Collins paid Holbrook with stock which they had already secured by reason of the scrip transactions and as a matter of fact, the title never passed through them and on no theory of law could have been purged of fraud by such a transaction without the legal title actually having passed through said Curtis and Collins.

64. Complainant excepts to the finding and report of the Master (page 106), that "it is perfectly clear that Curtis and Collins had neither actual nor constructive notice of any possible fraud in these cases," in that at the outset they knew there was danger of fraud being perpetrated in acquiring the

lands; they did not expect to get a solid body of timber land without fraud being perpetrated; they got a solid body of timber land and they took particular pains never to investigate or to allow anything to come to their attention which might put them on notice, and further they were dealing as partners with Holbrook in that Curtis and Collins were putting up the money and Holbrook was getting the land and the way their interests were being [55] divided was on a basis of the land being valued at $7.50 an acre or $10 an acre and Holbrook's interest was to be the difference between the cost of the land and the value for which he turned it in.

64A. Complainant excepts to the finding and report of the Master (page 106) that "the Curtis, Collins and Holbrook Company, even under the vice-presidency of Holbrook, taking it from two innocent purchasers, would have held free and clear of the Government claim," in that there is no evidence to show that the Curtis, Collins and Holbrook Co. had any land from two innocent purchasers or from anyone other than the entrymen through the agency of Holbrook and Gregory.

65. Complainant excepts to the finding and report of the Master (page 106) that "The Curtis, Collins and Holbrook Company acquired the land of E. L. Cooksey, described in the bill against him, and all the other lands in this consolidated cause, ... by purchase in good faith for a valuable consideration and without notice, constructive or actual of any equity in behalf of the United

States," in that the same does not conform to the allegations of the answer and the defense of *bona fide* purchaser for valuable consideration and without notice being an affirmative defense, has not been established by any evidence and that the Master has failed to take into consideration all the matters specified in exception 58.

66. Complainant excepts to the report of said Master and to "The Summary Findings and Conclusions" (page 131) on the ground that the Master erred in making finding No. 2 thereof in this:

A. That the finding "That the said deed was recorded at the request of C. H. Holbrook, Jr., acting in behalf of and at the direction of his father, C. H. Holbrook of September 10, 1904, in the proper records" is not supported by the evidence in that the same would indicate that C. H. Holbrook, Jr., in having said deed recorded was acting as the agent of said C. H. Holbrook and had the custody of said deed for said C. H. Holbrook, whereas, the evidence establishes that when said deed was recorded the title to said land was vested in the Curtis, [56] Collins and Holbrook Co., respondent herein, and that said deed was held and recorded by said C. H. Holbrook, Jr., as the agent of the said Curtis, Collins and Holbrook Co.

B. That the finding "That the said Charles E. Gregory was a trustee for said Chas. H. Holbrook in taking and holding title to said land" is not supported by the evidence in that the same would indicate that said Gregory was holding title for the sole benefit of said C. H. Holbrook, whereas the

evidence establishes that Holbrook was the operating agent for the combination of Curtis, Collins and Holbrook, who formed the Curtis, Collins and Holbrook Co. for the purpose of holding these and other timber lands which they had accumulated.

C. That the finding "That said conveyance was made in pursuance of a prior contract between said C. H. Holbrook on the one hand, and T. D. Collins and J. G. Curtis on the other, whereby Holbrook agreed to sell to Curtis and Collins or to said corporation, if so directed by Curtis and Collins, and said Curtis and Collins agreed to buy from said Holbrook the lands described in said deed at the rate of either $7.50 or $10.00 an acre, and said Curtis and said Collins paid to said C. H. Holbrook a valuable consideration for said conveyance to said corporation, namely, part cash and part stock of said corporation transferred to said Holbrook, the total purchase price so paid being at the rate of $7.50 or $10 per acre" is not supported by the evidence in that the same would indicate that Holbrook was selling timber land to Curtis and Collins, whereas the evidence establishes that Holbrook had no timber land to sell. The evidence establishes that Curtis and Collins and Holbrook had entered into an agreement for the formation of a corporation to hold timber lands in which each of them, including Holbrook, was to have a substantial interest; that they desired to get title to a large body of timber land, the land involved in this suit being a part thereof, that said land belonged to the complainant and was vacant Government land; that

Holbrook was authorized to get title to this land by purchasing the claims of persons who should enter the [57] land; that Holbrook was to be the selector of the lands desired and conduct all the negotiations necessary to acquire title to said lands; that Collins and Curtis were to put up the necessary money and Holbrook his time and knowledge; that for said money Collins and Curtis should get stock at $100 per share, and to fix Holbrook's share in the transaction he was allowed for a time $7.50 and later $10.00 per acre for which he took part stock and part cash, the cash being necessary to carry on the operations.

D. That the finding "That on May 2, 1903, neither said T. D. Collins or J. G. Curtis or the Curtis, Collins and Holbrook Co. knew or were charged with knowledge of said fraud hereinbefore set forth or any fraud at all; and the said Curtis and Collins and the said corporation did not know and did not become charged with knowledge of said or any other fraud in the obtaining of said patent until on or about the year 1908; that the said Curtis, Collins and Holbrook Co., a corporation, was therefore at the time of its acquisition of the land conveyed to said Cooksey by said patent a *bona fide* purchaser for a valuable consideration and without notice or knowledge of any fraud against the United States; that said deed to said corporation was recorded in the proper office at the request of said company on October 18, 1909," is not supported by the evidence and is contrary thereto in that it wholly fails to take into consideration and

totally ignores the fact that at the time Holbrook discussed with the Collinses and Curtises the advisability of purchasing timber and stone entrymen's claims, E. S. Collins knew that this method of acquiring timber lands had resulted in scandal in Washington and that he was desirous that no scandal arise in connection with their lands, that he did not believe that a solid body of timber land could be obtained legally under the Timber and Stone Act for if they were acquired legally someone else would buy out the entrymen and that the company did, by this method, acquire a solid body of timber land, namely, the land which Remick had entrymen take up; and that other portions of the land taken up were also solid and [58] adjoined land which the Curtis, Collins and Holbrook Co. had previously acquired by the scrip method; and the fact that in all their discussion, which was considerable, about acquiring land by the purchase of claims taken up under the Timber and Stone Act, they never discussed the matter or consulted with their attorney, C. A. Shurtleff; and that after having decided upon the acquiring of land which had been taken up under the Timber and Stone Act, they should never have discussed the matter of the method of acquiring these timber claims again with Mr. Holbrook; that there was no investigation made of the titles in any way, either that the lands had ever been taken up under the Timber and Stone Act or that the entryman and his successor in interest had ever made deeds conveying the title to said lands to the company; and that the deeds from the

entrymen were obtained so shortly after the date of making final proof, which of itself has been held to be not sufficient to charge notice, yet taken with all the other circumstances in this case is indicative either of actual knowledge of the fraud or a careful and assiduous effort on the part of the Curtises and Collinses not to learn of any fraud; and the fact that the slightest investigation of the titles would have established, accepting their own construction of the facts, if not that a fraud had been perpetrated upon the Government, that a fraud had been perpetrated upon them in that Holbrook was representing that he could not get the land for $7.50 per acre, whereas, as a matter of fact, he was getting most of it for about $3.75 per acre, the discovery of which fraud would have meant Holbrook's ruination, and the fact that at the time they were purchasing these lands, they were not purchasing the legal title but were merely purchasing the equitable title which of itself should have made them more careful in regard to the title which they were acquiring; and the fact that the deeds from the entrymen to Gregory had not been recorded at the time the corporation got its title; and the fact that the corporation did not place its deeds from Gregory of record in a great many cases until after the institution of these suits, although at the time [59] that Holbrook sold out it became definitely and certainly known that the corporation's deeds had not been placed of record; and the fact that the corporation did not have the deeds from the entrymen to Gregory recorded until after patent had issued

in each case; and the fact that Tuman was paid $150,000 for his 200 shares of stock, which Collins did not believe to be worth more than half the price paid, the excuse being given for such a price that he was afraid that a third person, Durphy, was going to get the stock, whom he did not wish to have in the corporation, which excuse becomes trivial when it is considered that over 5,000 shares of the stock had been issued and that T. D. Collins and E. S. Collins owned all of said stock with the exception of the 200 shares which Tuman owned, and had absolute control of the corporation and that said corporation was a holding company, holding nothing but timber land and was not operating any of its timber lands and that said stock was a source of expense and would be for years to come; and that Tuman's stock was purchased after the commencement of these suits; and that Tuman refused to state to the Government's attorney before he went on the stand to testify, why title was taken in the name of Gregory from the entrymen, and the source of the money which was used for operating in the field in acquiring these lands; and the fact that in Tuman's settlement with Holbrook he did not get more than half of what he was entitled to and that said contract of settlement was negotiated by T. D. Collins; and the fact that J. E. Remick, one of the locators was always in court and the peculiar changes in the testimony of A. W. Savercool and Warren Stark during the course of the trial taken in connection with James Savercool's and Willis Savercool's testimony, and the character

of the testimony of James Stark, Burt Burris, and other witnesses, and the fact that in the purchase of some of the lands Holbrook had to pay $10 an acre for the land and that the corporation got the land for the price of $10 an acre; and the fact that Collins knew that on other lands than the land acquired under the Timber and Stone Act, and the land acquired under the contract [60] Exhibit "B" in evidence, Holbrook did not get any commissions from the company, although he negotiated the purchases for the company and was its purchasing agent therein, and the fact that Holbrook was the agent for the company to determine the character, quantity and quality of the timber on the lands purchased and the fact that Holbrook was the agent of the company to determine that the titles were regular; and the fact that Holbrook was the agent of the company to determine that the title had been properly vested in the company; and the fact that Holbrook was the managing director and vice-president of the corporation and had complete charge of all the papers and records of said corporation, and that his signature was necessary on the corporation checks.

In support of the foregoing exceptions A, B, C and D, to the summary of special findings and conclusions of the Master we rely on the transcript of the testimony of T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis, Chas. H. Holbrook, Jr., G. E. Tuman, Chas. A. Shurtleff, J. E. Remick, John Heppe, Irving Moulton, and the testimony of all the entrymen as showing the method of procedure

in all cases in taking up the land, and the testimony of Edward Brase, Burt Burris, F. G. Hall, A. A. Hall, Mrs. Cora Hall, Chas. E. Gregory, W. G. Lawrence, James Perini, Frank Sorsoli, Chas. E. Swayse and Arthur E. Vollmer.

IV.

The Court erred in sustaining the conclusion of the Master that the burden of proof was upon the plaintiff to show that the defendant Curtis, Collins & Holbrook Company was not a *bona fide* purchaser for value, and without notice of the fraud.

V.

The Court erred in holding and concluding that the burden of proof was upon the plaintiff to show that the defendant Curtis, Collins & Holbrook Company was not a *bona fide* purchaser for value, and without notice of the fraud. [61]

VI.

The Court erred in sustaining the conclusion of the Master that the defendant Curtis, Collins & Holbrook Company was a *bona fide* purchaser for value, and without notice of the fraud practiced upon plaintiff in the acquisition of the patent to the land described in the bill of complaint.

VII.

The Court erred in holding and concluding that the defendant Curtis, Collins & Holbrook Company was a *bona fide* purchaser for value, and without notice of the fraud practiced upon the plaintiff in the acquisition of the patent to the land described in the bill of complaint.

VIII.

The Court erred in sustaining the finding and conclusion of the Master that the defendant Curtis, Collins & Holbrook Company was not bound by the knowledge of Charles H. Holbrook of the fraud practiced upon the plaintiff in the procurement of said patent to said land, and that Charles H. Holbrook did not act as agent, representative or member of the defendant Curtis, Collins & Holbrook Company in the procurement of title to the said land by Curtis, Collins & Holbrook Company.

IX.

The Court erred in holding and concluding that the defendant Curtis, Collins & Holbrook Company was not bound by the knowledge of Charles H. Holbrook of the fraud practiced upon the plaintiff in the procurement of said patent to said lands, and that said Charles H. Holbrook did not act as agent, representative or member of the defendant Curtis, Collins & Holbrook Company in the procurement of title to the said land by said Curtis, Collins & Holbrook Company.

WHEREFORE, the plaintiff prays that the said decree be reversed; that the said United States Circuit Court of Appeals for the Ninth Circuit shall cause the proper decree to be entered whereby the said patent issued to William J. Gardenhire on the 28th day of October, 1904, for the SE. ¼ of NE. ¼, S. ½ of SE. ¼, Sec. 9, Twp. 26 N., R. 6 E., M. D. M., shall be cancelled and the title to the [62] said lands involved in this suit shall be restored to the United States of America; and such

further relief as the plaintiff may be entitled to receive.

Dated October 12th, 1917.

JNO. W. PRESTON,
United States Attorney for the Northern District of California.

ED. F. JARED,
Assistant U. S. Attorney.

[Endorsed]: Filed Oct. 11, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [63]

In the District Court of the United States for the Northern District of California, Second Division.

IN EQUITY—No. 15,189.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM J. GARDENHIRE et al.,
Defendants.

Stipulation as to Use on Appeal of Statement of Evidence and Record in Cause No. 15,077, United States vs. Edward L. Cooksey et al.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to the above-entitled cause, by their respective counsel, that in perfecting the record for appeal to the United States Circuit Court of Appeals for the Ninth Circuit, the statement of evidence to be incorporated

in the record on appeal in cause No. 15,077, entitled United States of America vs. Edward L. Cooksey et al., shall be taken as the statement of evidence in this cause and that the complete record prepared, filed and printed in said cause No. 15,077, shall be available to all parties wherever material to this cause; and in the presentation of the above-entitled cause to the Circuit Court of Appeals both parties may file such briefs as they desire in said cause No. 15,077, and may argue and discuss therein any and all questions that may arise in this cause.

This stipulation is entered into on behalf of the said defendants without waiving, but saving and reserving to themselves all manner of exceptions that they may now have respecting the jurisdiction of the Circuit Court of Appeals for the Ninth [64] Circuit to hear and determine this cause on appeal; also without waiving, but saving and excepting, the defendants' right to have the appeal in this cause separately considered and determined.

Dated July 20th, 1920.

FRANK M. SILVA,
United States Attorney,
S. W. WILLIAMS,
Special Assistant to the Attorney General,
Solicitors for the Plaintiff.
CHARLES A. SHURTLEFF,
Solicitor for the Defendants.

It is so ordered.

WM. H. SAWTELLE,
District Judge.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [65]

In the District Court of the United States for the Northern District of California, Second Division.

IN EQUITY—No. 15,189.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM J. GARDENHIRE et al.,
Defendants.

Notice of Election by United States as to Printing of Record.

The United States of America having appealed from the decree of said Court entered against the plaintiff, to the United States Circuit Court of Appeals for the Ninth Circuit, hereby gives notice that it elects to take and file in the said Appellate Court, to be printed under the supervision of its clerk, under its rules, a duly authenticated transcript of such portions of the record as may be duly settled and indicated under Rule 75 of the "Rules & Practice for the Courts of Equity of the United States."

Dated this 20th day of July, A. D. 1920.

_____,
United States Attorney,
S. W. WILLIAMS,
Special Assistant to the Attorney General,
Solicitors for the Plaintiff. [66]

Received a copy of the above and foregoing notice this 20th day of July, A. D. 1920.

CHARLES A. SHURTLEFF,
Solicitor for the Defendants.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [67]

In the District Court of the United States for the Northern District of California, Second Division.

IN EQUITY—No. 15,189.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM J. GARDENHIRE et al.,
Defendants.

Praecipe for Transcript of Record on Appeal.

To Walter B. Maling, Clerk of the Above-entitled Court:

Please prepare and duly authenticate for the appeal of the plaintiff, United States of America, to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in the above-entitled cause of April 13, 1917, a transcript incorporating the following portions of the record therein, and none other:

1. Bill of complaint.
2. Answer of Curtis, Collins & Holbrook Company to the bill of complaint.

3. Replication to answer of Curtis, Collins & Holbrook Co.

4. Order referring cause to master in chancery to take testimony, report, etc.

5. Master's report.

6. Plaintiff's objections and exceptions to Master's report.

7. Order overruling objections and exceptions to Master's report and confirming same.

8. Final decree.

9. Petition of United States of America for its appeal. [68]

10. Order allowing appeal.

11. Assignment of errors filed by United States.

12. Citation issued on appeal showing service.

13. Stipulation as to use of statement of evidence and record in cause No. 15,077, United States vs. Edward L. Cooksey et al.

14. All orders and stipulations enlarging the time in which statement of evidence to be incorporated in the record on appeal shall be filed.

15. Notice of election as to printing of record.

16. This praecipe.

S. W. WILLIAMS,
Special Assistant to the Attorney General,
Solicitor for the Plaintiff.

Service of a copy of the foregoing praecipe is hereby acknowledged, this July 20th, 1920.

CHARLES A. SHURTLEFF,
Solicitor for the Defendants.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [69]

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing 69 pages, numbered from 1 to 69, inclusive, to be a full, true and correct copy of the record and proceedings in the cause entitled, United States of America, Plaintiff, vs. William J. Gardenhire et al., Defendant, No. 15,189, as the same remains of record and on file in the office of the clerk of said court.

I further certify that the cost for preparing the foregoing transcript on appeal is the sum of Thirty-seven dollars and Fifty-five Cents ($37.55), and that said amount will be charged by me in my quarterly account against the United States, for the quarter ending September 30th, 1920; and that the original citation on appeal issued in said cause is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 25th day of September, A. D. 1920.

[Seal] WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [70]

Citation on Appeal.

UNITED STATES OF AMERICA—ss.

The President of the United States to William J. Gardenhire, Charles E. Gregory, Curtis, Collins & Holbrook Company, a Corporation, Pennsylvania Lumber Company, a Corporation, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 11th day of October, A. D. 1917.

WM. C. VAN FLEET,
United States District Judge. [71]

Received copy of within citation, on October 13, 1917.

CHARLES A. SHURTLEFF.

[Endorsed]: No. 15,189. United States District Court for the Northern District of California. United States of America, Appellant, vs. William J. Gardenhire et al. Citation on Appeal. Filed Oct. 13, 1917. Walter B. Maling, Clerk.

[Endorsed]: No. 3576. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. William J. Gardenhire, Charles E. Gregory, Curtis, Collins & Holbrook Company, a Corporation, Pennsylvania Lumber Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed September 25, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Filed October 5, 1920. F. D. Monckton, Clerk.

No. 3576

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,

Appellees.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.



At a stated term, to wit, the October Term, A. D. 1920, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the twenty-seventh day of October, in the year of our Lord one thousand nine hundred and twenty. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3551 and Nos. 3554 to and Including 3576.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY et al.,

Appellees.

Order of Submission.

ORDERED appeals in each of the above-entitled causes argued by Mr. S. W. Williams, Special Assistant to the Attorney General and counsel for the appellant, and by Mr. Charles A. Shurtleff, counsel for the appellees, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Monday, the third day of October, in the year of our Lord one thousand nine hundred and twenty-one. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Order Directing Filing of Opinion and Filing and Recording of Decree.

By direction of the Honorable William B. Gilbert, William W. Morrow, and William H. Hunt, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the clerk, and that a Decree be filed and recorded in the minutes of this court, in accordance with said opinion.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the third day of October, in the year of our Lord one thousand nine hundred and twenty-one. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

Nos. 3554 to and Including No. 3576.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

JOHN HUNTINGTON, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY et al.,

Appellees.

Order Directing Filing of Opinion and Filing and Recording of Decrees.

By direction of the Honorable William B. Gilbert, William W. Morrow, and William H. Hunt, Circuit Judges, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled causes be forthwith filed by the clerk, and that a Decree be filed and recorded in each of the causes in the

minutes of this court, in accordance with said opinion.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Opinion U. S. Circuit Court of Appeals.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Before GILBERT, MORROW and HUNT, Circuit Judges.

This appeal, together with appeals in twenty-three companion cases, was taken from a decree dismissing a suit to cancel a patent for lands alleged to have been fraudulently obtained in violation of the provisions of the Timber and Stone Act (Act of Congress June 3, 1878, amended by Act of August 4, 1892). Cooksey's case is taken as representative.

The complaint alleges that the entryman swore falsely in that he swore that he applied for land named in the application for his own benefit,

whereas, before making his application he had agreed to convey the land to the Curtis, Collins and Holbrook Company; that that company knew of the fraud and procured Cooksey to make the entry for its benefit. The defense of *bona fide* purchaser is relied upon. Upon reference, the master found that the entries had been made under prior illegal agreements between the entrymen and one Tuman, but that the Curtis, Collins and Holbrook Company had no notice of such illegal arrangements and was an innocent purchaser. The substance of the findings is:

In 1901, Tuman endeavored to interest C. H. Holbrook, Sr., in certain timber lands in California. At that time persons owning lands within the limits of the national forests could reconvey them to the United States and select in lieu other lands of equal area outside of the national forests. In December, 1901, Holbrook, as party of the first part, and J. G. Curtis and T. D. Collins, as parties of the second part, agreed among themselves in writing as follows:

For a consideration of $1.00 from each of the parties to the other, and the promises contained, Holbrook agreed to sell Curtis and Collins 42,380 acres of timber land in California and to have title vested in Collins and Curtis as in the manner set forth in the contract at $7.50 per acre. The timber lands were described in a schedule. Holbrook was to obtain title to the 42,380 acres of forest reserve land for which he was to receive from the United States a like quantity of the timber lands, title to be secured to Curtis and Collins in the following manner:

The forest reserve lands were to be deeded to Thompson, trustee, to be held in trust by him in pursuance of the terms of the agreement. Curtis and Collins were to deposit $200,000 in bank to be used in purchasing forest reserve land at not exceeding $5.00 per acre. Payments were to be made by the bank to the owner of the forest reserve lands upon proper certificate of a designated attorney and the trustee, upon the written request of Holbrook, was to deed the forest reserve lands to the United States and to make application for the timber land and when title had been acquired to the timber land and upon notice from Holbrook that he had been fully paid, the trustee was to convey to Curtis and Collins, or to whomsoever they might direct. When title was acquired to the 42,380 acres, Holbrook was to be paid the balance of the purchase price named as $115,600.00 and should receive 789 shares of the stock of a corporation to be formed and certain sums in cash and the balance in interest bearing promissory notes of Curtis and Collins. The corporation was to have a capital stock of $500,000, divided into 5,000 shares of $100.00 each, and Curtis and Collins were to deed the lands to the corporation and 3,156 shares were to be issued to Curtis and Collins, 1,844 shares to remain in the treasury. Holbrook was to be a director and was vice-president and general manager. It was further provided that if Holbrook could not secure title to the whole of the 42,380 acres of land by forest reserve he might secure such titles through any other legal means or source, but in no event should he or the persons deeding the

same be paid for the lands thus acquired until the title thereto was certified to be good by the attorney and deeded to the trustee and when so certified the bank should pay for the land.

Holbrook and his son acquired the necessary scrip paying therefor from $3.00 to $5.50 per acre. Tuman was interested with Holbrook but this was not generally known. When Holbrook reported that it was difficult to obtain forest reserve scrip he advised Curtis and Collins that there were other valuable public lands, title to which could be secured under the Timber and Stone law. Curtis and Collins were satisfied provided good title would be obtained, and pursuant to oral agreement title was acquired under the Timber and Stone law to about 30,000 acres, including the lands involved in these suits. The Timber and Stone entries were made through agents of Tuman. One of the agents was told by Tuman that money would be advanced if necessary to pay for the land and that thereafter the entrymen could sell at a profit of $100.00 above all expenses and the agent would receive a location fee of $25.00 for each claim that Tuman purchased. Such agreements were carried out, the money was furnished by Tuman, and when the land was entered and the entryman was paid $100.00 above all expenses deeds were taken in the name of Charles E. Gregory who was not known to the entryman and whose name was used by Tuman and Holbrook. Nearly all the Timber and Stone entries were made in the last half of 1902 and the deeds to Gregory were made soon after proof by the entrymen, but

were not recorded until June, 1904. Gregory deeded to the corporation, Curtis, Collins and Holbrook Company, but knew nothing about the lands and merely permitted his name to be used. The Curtis, Collins and Holbrook Company was organized August 14, 1902, the incorporators being J. G. Curtis and his son D. G. Curtis; T. D. Collins and his son E. S. Collins; Charles H. Holbrook and his son Charles H. Holbrook, Jr., and Irving F. Moulton. Gregory assigned the contracts involved to the company at different times up to 1904, but none of the deeds were recorded until October, 1909, and some were not recorded until 1910 and 1911. By direction of Holbrook, on May 2, 1903, Gregory conveyed the land involved in the Cooksey entry to Curtis, Collins and Holbrook Company, conveyance being made in pursuance of the contract already referred to between Holbrook and Collins and Curtis. The master found that about May 2, 1903, the corporation, in consideration of the conveyance to it, issued to Curtis and Collins its stock at the rate of $7.50 or $10.00 per acre conveyed; that Curtis and Collins paid to Holbrook a valuable consideration for the conveyance to the corporation; that on May 2, 1903, neither Collins nor Curtis nor the corporation knew or were charged with knowledge of the fraud or of any fraud and none of them knew or was charged with knowledge of fraud in the obtaining of the patent until 1908, and that therefore, the Curtis, Collins and Holbrook Company at the time of the acquisition of the land conveyed by the patent was a *bona fide* purchaser for

a valuable consideration and without knowledge of any fraud against the United States.

HUNT, Judge, after stating the case:

The evidence sustains the finding that Cooksey, entryman, acquired the tract involved by unlawful practices in that he swore falsely when he made affidavit that prior to his entry he had not made an agreement whereby title to be acquired was to be conveyed to another person. Cooksey made final proof in October, 1903, and a few days afterwards conveyed to Gregory. The deed to Gregory was recorded September 10, 1904. Gregory, in May, 1903, conveyed to the corporation, and the deed was recorded in October, 1909. Gregory was ignorant of any fraud though he was a trustee for Holbrook and Tuman; and speaking generally of all the cases like Cooksey's, clearly Gregory as a grantee was a trustee for Holbrook and Tuman. But when we inquire into the attitude of Holbrook and Collins and Curtis, our conclusion is against that of the District Court.

Holbrook was vice-president and general manager of the corporation from the time of its organization in August, 1902, until 1904 when he sold his stock to Collins. Holbrook drew checks of the corporation and signed them. Tuman said that Holbrook talked with him, was advised of what was going on and knew that he was lending money to applicants for entries. The circumstances show that he did. Holbrook established a bank account at Susanville, California, and Tuman was authorized to draw against the account. In October, 1902, $1728 was

drawn from an account in the name of Collins and Holbrook in a San Francisco bank, and like amount was put to the credit of Holbrook in Susanville a few days afterwards. Later in the same year other withdrawals from the same account in a San Francisco bank were made and substantially equal sums put to Holbrook's credit in the Lassen County Bank. It is but a reasonable inference that this money was used by Tuman to make payments for entries.

Although Collins and Curtis lived in Pennsylvania, they, together with Holbrook and Tuman, looked at the lands and timber in 1902 after the contract was made. D. G. Curtis, Jr., who was treasurer of the company, also frequently went upon the lands.

Because of Tuman's claim that he was entitled to an equal interest with Holbrook in the enterprise, a quarrel arose which resulted in a suit by Tuman against Holbrook, filed in 1904, for half of the stock interest that Holbrook had received. T. D. Collins was instrumental in effecting a compromise of the suit whereby Tuman accepted 200 shares of stock in the company and $10,000 in money. After the present suit was instituted Collins bought 200 shares of stock from Tuman paying him $750.00 per share, a sum which Collins himself testified was much more than the stock was worth. The explanation given by Collins for paying such a high price for the stock was that he understood an outsider in whose integrity he had no confidence wished to buy the shares. When considered with the other circumstances the transaction is suspicious. It is in evi-

dence too that in 1904 and 1906 officials of the General Land Office were actively investigating entries of lands not involved in this case but in the same vicinity and which it was alleged by the officials had been sold to the Curtis, Collins and Holbrook Company. Tuman discussed the matter with Holbrook and testified that Holbrook was opposed to defending the entries. He also talked over the matter with E. S. Collins and T. D. Collins. T. D. Collins admitted that he had talked about these lands, but they were lost and "that was all there was to it." Holbrook owned about 900 out of 5,000 shares of the capital stock of the corporation, and there are so many circumstances which go to show that he knew what Tuman was doing that it must be held that he had notice, actual or constructive, of fraud committed by Tuman, in the agreements made with the entrymen as to the titles, and that his knowledge is imputable to the corporation. Moreover we cannot avoid the conclusion that T. D. Collins and J. G. Curtis, and their sons, were sufficiently informed of facts and circumstances to have put them upon inquiry.

Appellees had the burden of proof to establish the defense of *bona fide* purchasers. Wright-Blodgett Co. vs. United States, 236 U. S. 397. There the Court distinctly held that one who pleads that he is an innocent purchaser without notice must establish affirmatively his defense in order to defeat the right of the government to cancellation of a conveyance which fraud alone is shown to have induced. The same doctrine is laid down in Cooper vs. United

States, 220 Fed. 871; No. Colo. Coal Co. vs. United States, 234 Fed. 34. And in our judgment it was error on the part of the master and of the District Court to consider the case as one where the burden was on the government to prove that the purchaser had notice of the fraud. The evidence is undisputed that the purchases of lands were made in pursuance of the contract between Holbrook, party of the first part, and Collins and Curtis, parties of the second part. By the terms of the contract there was an obligation upon the parties of the second part to deposit a large sum to be used, not by Holbrook, but by the bank in payment for forest reserve lands, the lands to be deeded by the owners to the trustee and to be paid for by the bank upon Holbrook's certificate that the vendors were entitled to payment and the certificate of the attorney that the title was good. While the contract in its first part recites that Holbrook promises and agrees to sell the land described in the manner set forth thereafter in the contract in reality the contract is one and was carried out as one whereby the parties of the second part engaged the services of Holbrook as their agent to procure for them the title to the lands referred to, the purchase price of the lands to be paid by the parties of the second part out of their own funds and to be paid not to Holbrook but directly to the vendors of the lands. The corporation took deeds from Gregory but paid him no consideration whatever for the land. The purchase was not made from Holbrook and from Curtis and Collins individually because neither Holbrook nor Curtis nor Collins had the

title to the land and none of them were in possession thereof. In its real aspect the case is brought within the familiar rule that notice to, or knowledge of, an agent while acting within the scope of his authority and in reference to a matter over which his authority extends, is notice to, or knowledge of, the principal. Meachem on Agency, sec. 1803. We can find no substantial ground upon which to conclude that the case is excepted from the general rule.

It follows that Holbrook's knowledge is imputable to his principals, and they must be held to have known of the method by which the title to the lands was acquired. No. Colo. Coal Co. vs. United States, 234 Fed. 34.

The decree is reversed and the cause is remanded, with instructions to enter a decree cancelling the patent.

Reversed.

[Endorsed]: Opinion. Filed October 3, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3554.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

JOHN HUNTINGTON, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, et al.,

Appellees.

No. 3555.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

REUBEN J. MITCHELL, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3556.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

HENRIETTA TUMAN, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3557.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

GERTIE TERRELL, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3558.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

REBECCA H. HEPPE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3559.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JACOB S. AID, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3560.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

THOMAS L. AID, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3561.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

HENRY MORLEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3562.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

ELIJAH TAYLOR, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3563.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

ROBERT CHARLES TAYLOR, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3564.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CARRIE M. ALLEN, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3565.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JAMES D. BAKER, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3566.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

MAYME H. BAKER, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3567.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JOHN L. GRAY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3568.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

MARGARET J. BAKER, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3569.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

M. JACKSON SELF, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3570.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JOHN VANORNUM, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3571.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

GEORGE D. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3572.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JAMES D. AID, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3573.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JOHN W. AID, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3574.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CHARLES J. ALLEN, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3575.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CHARLES J. MONROE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

Opinion U. S. Circuit Court of Appeals.

In each of the above-entitled cases the essential facts are similar to those found in the Cooksey case (*ante*, p. ——).

In Huntington's case entry was made October 16, 1902; deed to Gregory was executed nine days thereafter, but not recorded for about two years, and after patent was issued. The land was conveyed to the Curtis, Collins & Holbrook Company May 2, 1903, but the deed was not recorded until several years later.

In Mitchell's case the entry was made November 18, 1902, and on that day he executed a deed of conveyance to Gregory which was not recorded until September 14, 1904. Gregory conveyed on May 2, 1903, to the corporation, but the deed was not recorded until several years had passed.

Henrietta Tuman's case disclosed that the entry was made September 20, 1902, the land conveyed to Gregory January 20, 1903, but the deed not

recorded until September 10, 1904. Gregory conveyed to the corporation October 15, 1904, but the deed was not recorded until more than five years thereafter.

Gertie Terrell made entry September 3, 1902; deeded to Gregory on September 11, 1902, but the deed was not recorded for about two years and until after patent issued. Gregory conveyed to the corporation in December, 1902, but the deed was not recorded until more than seven years had passed.

The case of Rebecca H. Heppe shows that the entrywoman conveyed to Gregory about a week after she made entry but the deed was not recorded until two years afterwards and until several months had passed after patent was issued. Gregory conveyed to the corporation in December, 1902, but the deed was not recorded until years afterwards.

Jacob S. Aid made entry November 21, 1902, and deeded to Gregory December 9, 1902, but the deed was not recorded until about two years afterwards; patent issued June 8, 1904 and Gregory deeded to the company May 2, 1903, but the deed was not recorded until six or seven years afterwards.

Thomas L. Aid and James D. Aid made entries November 21, 1902, conveyed to Gregory December 9, 1902, but the deeds were not recorded until two years later. Gregory conveyed to the corporation May 2, 1903, and patents were issued in 1904, but the Gregory deeds were not recorded for several years afterwards.

In Henry Morley's case entry was made December 24, 1902; conveyance to Gregory was made December 19, 1902, but the deed was not put on record for two years, and until after patent was issued. Gregory's conveyance to the corporation was dated May 2, 1903, but it was not recorded for several years afterwards.

Elijah Taylor made entry November 29, 1902, conveyed to Gregory December 1, 1902, but the deed was not recorded until December 14, 1904. Patent issued June 8, 1904, and Gregory conveyed to the company May 2, 1903, but the deed was not recorded until more than five years later.

Robert C. Taylor's entry was made November 29, 1902, and on December 1st thereafter Taylor conveyed to Gregory, and the deed was recorded September 23, 1904. Patent to Taylor issued June 8, 1904, and Gregory conveyed to the company May 2, 1903, but Gregory's deed to the company was not recorded until about seven years thereafter.

Carrie M. Allen made entry October 3, 1902, deeded to Gregory October 14, 1902, but the deed was not recorded until March 28, 1910. Patent was issued September 15, 1904 and Gregory conveyed to the corporation December, 1902, but the deed was not recorded until more than six years thereafter.

James D. Baker made entry August 23, 1902, and very shortly afterwards conveyed to Gregory, but the deed to Gregory was not recorded until September, 1904, and after patent had issued.

Gregory conveyed to the corporation in December, 1902, but there is no record of the deed until years thereafter.

Mayme H. Baker made entry July 30, 1902, conveyed to Gregory September 6, 1902, and her deed was recorded November 12, 1904, after patent had been issued. Gregory conveyed to the corporation December 2, 1902, but the deed was not recorded until several years thereafter.

John L. Gray made entry November 29, 1902, and deeded to Gregory two days thereafter, but no deed was recorded until 1909. Patent issued in April, 1905, and in 1903 Gregory had conveyed to the corporation, but the deed was not recorded until 1910.

Margaret J. Baker made entry August 29, 1902, and conveyed to Gregory September 6, 1902, but no deed was recorded until April, 1910, long after patent had issued. Gregory conveyed to the company December 2, 1902, but the deed was not put on record until more than six years afterwards.

M. J. Self made entry February 6, 1903, conveyed to Gregory March, 1903, but there is no record of the deed until May, 1905. Gregory conveyed to the corporation in May, 1903, but the deed was not recorded until more than five years afterwards.

John Vanornum made his entry January 26, 1903, and on February 24, 1903 deeded to Gregory. The deed was recorded October 29, 1904, shortly after patent issued. Gregory deeded to the cor-

poration in May, 1903, but his deed was not recorded for several years.

George D. Gardenhire made entry September 22, 1902; soon thereafter conveyed to Gregory, but the deed was not recorded until March, 1911. Patent issued in December, 1904, and Gregory conveyed to the corporation in 1902, but the deed from Gregory was not recorded for more than six years afterwards.

John W. Aid made entry in November, 1902, conveyed to Gregory in December, 1902, and his deed was recorded in February, 1911; patent issued in 1906 and Gregory conveyed to the company in 1903, but the deed was not recorded for several years thereafter.

Charles J. Allen made entry October, 1902; conveyed to Gregory about ten days afterwards and the deed was recorded in March, 1910. Gregory deeded to the corporation in November, 1902; patent was issued in January, 1905, but the deed to the company was not recorded for several years afterwards.

Charles J. Monroe made entry in September, 1902, and conveyed the land two days afterwards to Gregory, but the deed was not recorded until March, 1911, about five years after patent had issued. Gregory conveyed to the company in December, 1902, but the deed was not recorded until about seven years thereafter.

W. J. Gardenhire made entry September, 1902; conveyed to Gregory in the same month, but the deed was not recorded until 1910, or six years after

issuance of patent. Gregory deeded to the company in December, 1902, but the deed was not recorded until years afterwards.

Upon the authority of United States vs. Cooksey et al., just heretofore decided, in each of the above-entitled cases the decree of the lower court is reversed and the cause is remanded, with directions to enter a decree cancelling the patent.

Reversed.

[Endorsed]: Opinion. Filed October 3, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3576.

UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,

Appellees.

Decree U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Second Division.

This cause came on to be heard on the Transcript

of the Record from the Southern Division of the District Court of the United States for the Northern District of California, Second Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is reversed and cause remanded to the said District Court with instructions to enter a decree canceling the patent.

[Endorsed]: Decree. Filed and entered October 3, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fifth day of December, in the year of our Lord one thousand nine hundred and twenty-one. Present: Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable FRANK H. RUDKIN, District Judge.

No. 3551 and Nos. 3554 to and Including No. 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, et al.,
Appellees.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert, William W. Morrow and William H. Hunt, Circuit Judges, before whom the causes were heard, it is ORDERED that the petition, filed November 1, 1921, on behalf of the appellees, for a rehearing in each of the above-entitled causes be, and hereby is denied.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,

Appellees.

Petition for Appeal from Circuit Court of Appeals for the Ninth Circuit to Supreme Court of the United States.

CURTIS, COLLINS & HOLBROOK COMPANY, a corporation, one of the appellees above named, and petitioner herein, herewith presents its petition in the above-entitled cause for appeal to the

Supreme Court of the United States, and in connection herewith, the petition of the said appellee respectfully shows and presents: That the above cause is now pending in the United States Circuit Court of Appeals for the Ninth Circuit, and that a final decree has therein been rendered on the 3d day of October, A. D. 1921, reversing the decree of the District Court of the United States for the Northern District of California, Second Division, and remanding the cause with instructions to enter a decree cancelling the patent issued by the United States of America to Edward L. Cooksey; that subsequent to the above-mentioned decree of this Honorable Court, this appellee petitioned this Honorable Court for a rehearing of said cause, which petition for a rehearing was denied on the 5th day of December, A. D. 1921; that this Honorable Court has made an order staying the issuance of the Mandate until this appeal is perfected, that the matter in controversy in this cause exceeds the sum of one thousand dollars ($1,000) besides costs, as shown by affidavit annexed hereto; that this cause is one in which the judgment or decree of the Circuit Court of Appeals is not made final by any law of the United States, and is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

That prior to the filing of this petition for an appeal herein, this petitioner and appellee caused to be personally served upon each of its co-appellees in this court or on all of those who could be found, a notice of its intention to prosecute this appeal,

and an invitation to said co-appellees in this court to join with this appellee in the prosecution of this appeal, and in the event said co-appellees would not join this appellee in the prosecution of this appeal, then they were notified that this appellee would prosecute said appeal without them. That none of said co-appellees has joined with petitioner in said appeal, or in any way signified his assent to so do.

WHEREFORE, the said petitioner and appellee, feeling itself aggrieved by the judgment so rendered and entered by the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, hereby appeals from said judgment of said last-named court to the Supreme Court of the United States and respectfully prays that said appeal be allowed to it in the above-entitled cause and an order be made granting such appeal and directing the clerk of the United States Circuit Court of Appeals for the Ninth Circuit to send the records and proceedings in the said cause, with all things concerning the same to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellee, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

And Curtis, Collins & Holbrook Company, the petitioner and appellee herein, further prays that the order allowing said appeal herein, shall further provide for the severance as customary in such cases, pursuant to the notice above referred to,

which was duly served upon all, or so many as could be found, of the co-appellees of this appellee in the court below, which notice has been duly filed with the clerk of this Honorable Court prior to the filing of this petition, and that said order shall provide as to all said co-appellees, that their interests may be severed from the interest of petitioner and appellee herein, and that petitioner and appellee may prosecute said appeal without them.

CURTIS, COLLINS & HOLBROOK COMPANY,
Petitioner and Appellee.

[Seal] CHARLES A. SHURTLEFF,
Secretary.

MORRIS R. CLARK,
Attorney for Curtis, Collins & Holbrook Company, Petitioner and Appellee.

State of California,
City and County of San Francisco,—ss.

Charles A. Shurtleff, being duly sworn, says:

I am the Secretary of the Curtis, Collins & Holbrook Company, the appellee herein; I am familiar with the land involved in this suit, and I know that the reasonable market value thereof is in excess of the sum of one thousand dollars ($1,000).

CHARLES A. SHURTLEFF.

Subscribed and sworn to before me this 17th day of February, 1922.

[Seal] W. W. HEALEY,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Petition for Appeal to Supreme Court U. S. Filed February 23, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3576.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,

Appellees.

Assignment of Errors.

CURTIS, COLLINS & HOLBROOK COMPANY, a corporation, an appellee in the above-entitled cause, in connection with its petition for appeal herein, presents and files therewith, the following assignment of errors, as to which matters and things it says that the decree entered herein on the 3d day of October, 1921, is erroneous, to wit:

1st. In refusing to enter a decree affirming the judgment of the District Court dismissing the bill of complaint.

2d. In making and entering of record a decree

cancelling the patent referred to in the bill of complaint.

3d. In making and entering a decree reversing the District Court.

4th. In holding that C. H. Holbrook, Sr., was an agent of J. G. Curtis and T. D. Collins, or either of them, in the purchase of the land in suit.

5th. In holding that said C. H. Holbrook, Sr., was an agent of the Curtis, Collins & Holbrook Company, appellee, in the purchase of said land.

6th. In failing to hold that said C. H. Holbrook, Sr., in all matters relating to the acquisition of said lands by said Curtis and Collins and the Curtis, Collins & Holbrook Company, a corporation, or any of them, was a vendor of said lands.

7th. In holding that C. H. Holbrook, Sr., had notice, actual or constructive, of any fraud on the part of one Tuman.

8th. In holding that any knowledge possessed by said C. H. Holbrook, Sr., of any fraud in connection with the entry of said lands should be imputed to said Curtis and said Collins and said corporation, or any of them.

9th. In failing to hold that if said C. H. Holbrook, Sr., had any knowledge of any fraud in connection with said entry, said knowledge was not imputable to either said Collins or said Curtis, or said Curtis, Collins & Holbrook Company, a corporation.

10th. In failing to hold that said Curtis and said Collins and said Curtis, Collins & Holbrook Company, a corporation, were and each and all were innocent purchasers of said land for a valuable consideration, and without notice, actual or imputed,

of any fraud in connection with the entry thereof.

11th. In failing to hold that the Curtis, Collins & Holbrook Company, a corporation, was an innocent purchaser in good faith and for a valuable consideration, without notice of any fraud in connection with the entry of said land.

12th. In holding that there were certain circumstances sufficient to put said Curtis and said Collins and said Curtis, Collins & Holbrook Company, or any of them, on inquiry as to the facts pertaining to said entry.

13th. In holding that the purchase by Collins of Tuman's stock in Curtis, Collins & Holbrook Company was a suspicious circumstance.

14th. In directing that judgment be entered in favor of the Government and in failing, in the event of a reversal, to order a new trial.

15th. In failing to hold that the said C. H. Holbrook, in dealing with and selling the land described in the bill of complaint herein, was acting for himself and in his own interest and that the said interest of the said C. H. Holbrook was adverse to the interest of said Curtis and Collins and said Curtis, Collins & Holbrook Company, and each of them.

16th. In holding that any notice to or knowledge by the said C. H. Holbrook of fraud by the entrymen or any other person, in acquiring the lands described in the bill of complaint herein, from complainant, was notice to or the knowledge of, or was imputable to said Curtis and Collins and said Curtis, Collins & Holbrook Company, or either or any of them.

17th. In holding that said T. D. Collins knew of or was interested in, in any manner, the account or the funds represented thereby, in the Bank of California in the name of Holbrook & Collins.

18th. In holding that the fact that T. D. Collins aided in the settlement of the controversy between George E. Tuman and C. H. Holbrook relative to the division between them of the profits realized by them from the sale to the said Curtis, Collins & Holbrook Company of the land described in the bill of complaint herein, indicated in any manner or at all that he, the said T. D. Collins, had knowledge of the fraud practiced upon complainant in the acquisition of such land or any part thereof.

19th. In holding and deciding that the defendant, Curtis, Collins & Holbrook Company was bound by the knowledge of Charles H. Holbrook of fraud practiced upon plaintiff in the acquisition of the patent to the land described in the bill of complaint.

20th. In holding and deciding that Collins or Curtis, or either of them, had knowledge of any fraud in connection with the entry or the acquisition of title to the land described in said bill of complaint.

21st. In holding and deciding that the evidence shows circumstances which go to show that T. D. Collins knew of any fraud in the entry or acquisition of said land and that he had notice, actual or constructive, of fraud committed by Tuman or any one else in the entry or acquisition of said land.

22d. In holding and deciding that the fact, shown by the evidence, that T. D. Collins, after consider-

ation paid, conveyance had and patent issued, and after the institution of this suit, purchased Tuman's stock in Curtis, Collins & Holbrook Company, was a suspicious circumstance.

23d. In holding and deciding adversely to the Master of the District Court that Curtis, Collins & Holbrook Company had the burden of proof to establish the defense of *bona fide* purchasers and then failing to remand this suit for a new trial, but on the contrary, ordering the patent to said land cancelled without an opportunity to Curtis, Collins & Holbrook Company to comply with the ruling of the Court as to the burden of proof.

24th. In considering evidence not properly before the Court.

25th. In considering evidence apparently adverse to Curtis, Collins & Holbrook Company, but excluded by the Master, without ruling upon the admissibility or inadmissibility of said evidence.

26th. In considering evidence excluded by the Master as to which necessarily Curtis, Collins & Holbrook Company had no opportunity nor occasion to rebut.

27th. In considering excluded evidence, the exclusion of which the United States did not make a basis of exception before said Court.

28th. In failing to hold that Curtis, Collins & Holbrook Company had fully met the burden of proof in producing evidence showing that it was a *bona fide* purchaser for value without notice of fraud in the entry or acquisition of said land.

WHEREFORE, said appellee, Curtis, Collins & Holbrook Company, a corporation, prays that said decree of the United States Circuit Court of Appeals for the Ninth Circuit be reversed and that said appellee be given such further relief as may be appropriate.

MORRIS R. CLARK,
Attorney for Appellee, Curtis, Collins & Holbrook Company.

[Endorsed]: Assignment of Errors on Appeal to Supreme Court U. S. Filed February 23, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

State of California,
City and County of San Francisco,—ss.

J. G. De Forest, being duly sworn, deposes and says:

That on and prior to the 29th day of December, 1919, he was the Vice-President of the Pennsylvania Lumber Company, a corporation, one of the appellees in the within-entitled suit; that he knows of his own knowledge that said corporation was finally dissolved by an order of the Superior Court of the State of California in and for the City and County of San Francisco, Department No. 1 thereof, on said 29th day of December, 1919;

That said appellee heretofore filed in the within entitled suit in the District Court of the United States in and for the Northern District of Cali-

fornia, Second Division, its disclaimer of all interest in the property involved in said suit.

Deponent further says that, except as to the appellees whose names appear on the annexed notice or on an affidavit annexed thereto (including this affidavit), to have been served or to be dead or impossible, after diligent search, to be found, or if a corporation to be finally dissolved, those named as defendants in the complaint or bill herein are merely fictitious parties, none of whom was ever served with process in said suit or appeared in said suit.

J. G. DE FOREST.

Subscribed and sworn to before me this 17th day of February, 1922.

[Seal] W. W. HEALEY,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

J. E. Remick, being first duly sworn, deposes and says:

That he is over the age of thirty years, a male citizen of the United States and not a party to the within-entitled action; that he personally received the annexed notice of summons and severance in the within-entitled suit on the 10th day of January, 1922, and thereupon made diligent search and inquiry for William J. Gardenhire, one of the within named appellees, and notwithstanding such diligent search, was unable to find said appellee, and was unable to

obtain information sufficient to enable him to ascertain the whereabouts of said William J. Gardenhire; that thereafter on the 30th day of January, 1922, he deposited in the United States Postoffice at San Francisco, with postage thereon prepaid, a copy of said notice addressed to said appellee at his last known place of residence, namely, Sacramento, California.

J. E. REMICK.

Subscribed and sworn to before me this 3d day of February, 1922.

[Seal] W. W. HEALEY,
Notary Public in and for the City and County of San Francisco, State of California.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,

Appellees.

Summons and Severance.

To WILLIAM J. GARDENHIRE, Defendant and Appellee: To CHARLES E. GREGORY, Defendant and Appellee:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED AND INVITED TO JOIN with the undersigned on or before the 6th day of February, 1922, to prosecute an appeal in the above-entitled cause from the United States Circuit Court of Appeals to the Supreme Court of the United States of America, to reverse the judgment and decree in the above-entitled cause with direction to enter a judgment canceling the patent issued by the United States of America to William J. Gardenhire, rendered against us jointly on the 3d day of October, 1921, in the above-entitled court, or you will be deemed to have acquiesced in said judgment and decree and the undersigned will prosecute said appeal without joining you as a party.

Dated: San Francisco, California, January 6, 1922.

CURTIS, COLLINS & HOLBROOK COMPANY.

[Seal] By CHARLES A. SHURTLEFF, Secretary.

MORRIS R. CLARK,

Attorney and Counsel for said Curtis, Collins & Holbrook Company.

Service of the above is accepted this 24th day of January, 1922, and we decline to appeal or join in an appeal.

_____.

CHAS. E. GREGORY.

[Endorsed]: Summons and Severance. Filed February 23, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the twenty-third day of February, in the year of our Lord one thousand nine hundred and twenty-two. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3551 and Nos. 3554 to and Including 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Order Allowing Appeal and Directing Severance and Fixing Amount of Supersedeas Bond.

This day came Curtis, Collins & Holbrook Company, one of the appellees in the above-entitled cause, and by Morris R. Clark, its attorney and counsel, presented its petition for an appeal, ac-

companied by an assignment of errors relied on, and a notice of summons and severance, with proper proof of service thereof, and upon motion duly made, asked the allowance of said appeal and an order of severance, whereupon it is ORDERED and ADJUDGED that the said appeal and claim of appeal be and the same is hereby allowed to the Supreme Court of the United States upon the filing of a bond on appeal, by the said appellee, in the sum of Five Hundred Dollars ($500.00), the same to operate as a supersedeas bond and also as a bond for costs and damages on appeal.

IT IS FURTHER ORDERED AND ADJUDGED that the notice of summons and severance herein having been served upon all or as many as could be found of the co-appellees of this appellee in the court below, either to join in this appeal or to decline to join herein, and no appearance having been made thereon, the said Curtis, Collins & Holbrook Company, a corporation, is hereby granted its appeal alone and for itself, and its interests are hereby severed as appellee of and from the interests of all others who were at any time or are now parties to the above-entitled cause, whether the interests of such parties were real or nominal only.

Premium charged for this bond is $10.00.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3576.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,

Appellees.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, Curtis, Collins & Holbrook Company, a corporation, as principal, and American Surety Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, as surety, are held and firmly bound unto the United States of America, in the sum of Five Hundred Dollars ($500.00) and for the payment of which well and truly to be made to the United States of America, we bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of February, 1922.

The condition of this obligation is such that whereas the above-named Curtis, Collins & Hol-

brook Company has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit made and entered in the above-entitled cause on the 3d day of October, 1921.

NOW, THEREFORE, if the said Curtis, Collins & Holbrook Company, a corporation, shall prosecute its said appeal to effect, and shall answer all damages and costs if it fails to make its said appeal good, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said parties hereto have hereunto caused their respective corporate names to be signed, and their respective corporate seals to be affixed hereto, by their officers thereunto duly authorized, the day and year first above written.

CURTIS, COLLINS & HOLBROOK COMPANY,
Principal,

[Seal] By CHARLES A. SHURTLEFF,
Secretary,

AMERICAN SURETY COMPANY OF NEW YORK,
Surety,

By R. D. WELDON,
Resident Vice-president.

[Seal] Attest: E. C. MILLER,
Resident Assistant Secretary.

The foregoing bond approved as to form and sufficiency this 25th day of Feb., 1922.

W. H. HUNT,
Circuit Judge.

[Endorsed]: Bond on Appeal to Supreme Court U. S. Filed February 25, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3576.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, Appellees.

Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record Upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and fifty (150) pages, numbered from and including 1 to and including 150, to be a full, true and correct copy of the record under Rule 8 of the Supreme Court of the United States, in the above-entitled cause, including the assignment of errors on appeal to the Supreme Court of the United States, including the opinion filed in the said Circuit Court of Appeals in the above-entitled case, as the originals thereof remain on file and appear of record in my office, and that the same constitutes the transcript of record upon appeal

to the Supreme Court of the United States in the above-entitled cause.

ATTEST my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of March, A. D. 1922.

[Seal] F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

Citation.

The President of the United States of America, to the United States of America:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, in the District of Columbia, within sixty (60) days after the date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, wherein the Curtis, Collins & Holbrook Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable WM. H. HUNT, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 23d day of Feb., 1922.

W. H. HUNT,
Judge, United States Circuit Court of Appeals, Ninth Circuit.

Service by copy of the within citation on appeal is hereby admitted this 24th day of February 1922.

JOHN T. WILLIAMS,
E. M. L.,
U. S. Atty.,
Attorney for Appellee.

[Endorsed]: Citation. Filed February 24, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.